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ALBERTA. COMMISSION TO INQUIRE INTO THE SUBMISSION OF THE OMBUDSMAN DATED OCTOBER 10, 1969.

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Exhibit

Draft No. 1

DEPARTMENT OF THE PROVINCIAL SECRETARY

365 - 2 - E

K. Walker

F i l e

March 26, 1959

Re: Edmonton Real Estate Board Co-operative Listing Bureau Limited - Application to the Supervisor of Co-operative Activities for the Approval of Amended By-laws

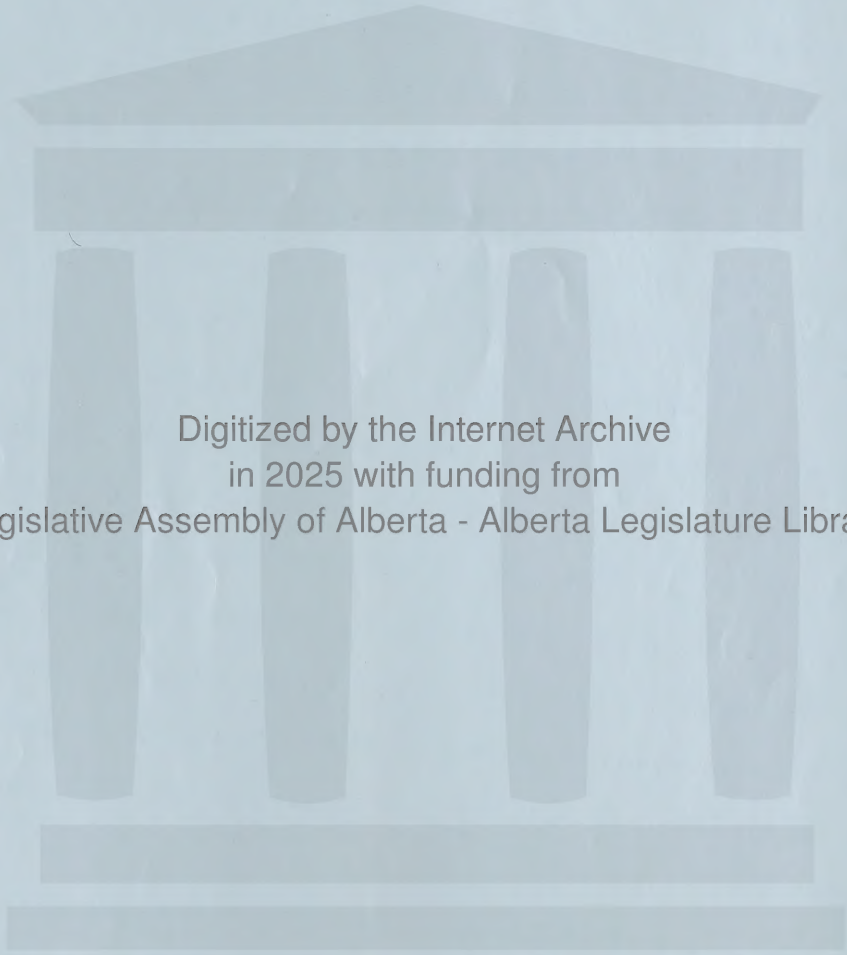
At 2:00 P.M. on March 13, 1959, a meeting was held in the Board Room of the Administration Building to discuss the above captioned. The meeting was chaired by Mr. Harold Webber, Supervisor of Co-operative Activities. The following persons were also present: J. A. MacPhee, Superintendent of Insurance, K. J. M. Walker, Chief Clerk, Office of Superintendent of Insurance, Mr. Ken McKenzie, solicitor for the Listing Bureau, Henry Flewwelling, J. A. Weber, M. Beckhuson, M. Winterburn, P. Sayko, H. Kellough, H. Holstad, G. Brandle, M. Cummings, Ralph Treasure, W. B. MacGregor, Don Reid.

In opening the meeting the chairman referred to an earlier meeting with the solicitor, Mr. McKenzie, and Mr. Beckhuson, when certain objections had been raised to a number of the amended by-laws. The first by-law to be discussed was by-law 2., and in particular (b) Voting Salesman Member. Mr. MacPhee expressed the opinion that it was surely wrong to have a master and servant as members of the same group, each having voting power even though the voting power of the salesman was considerably limited to that of the agent. Mr. MacPhee felt that this would destroy the principle of master and servant relationship. He further felt that although the salesman's vote was limited, it was entirely possible in the case of a majority vote for the one vote of a salesman to decide an important issue. Mr. MacPhee said that this was principally an association of employers and it was unsound to allow an employee (salesman) to have any voting powers whatsoever. In reply to Mr. MacPhee Mr. McKenzie expressed the opinion that this particular by-law would never affect the principle of master and servant. He did not feel either that the administration of the Superintendent would in any way be affected. Mr. McKenzie

said that the situation in question exists in many societies and, as an instance, he named the Law Society, where employee lawyers have as much of a say as employer lawyers. He felt also that the situation was no different to that which obtained in the Association of Superintendents of Insurance. He further felt that no matter of any importance would ever be decided upon by a snap vote. Mr. Cummings then added to Mr. McKenzie's remarks by saying that under the old organization salesmen had had full voting privileges and could affect the policy of the Association and it was for this reason that there was a division amongst the agents created because of the objection of the small agent with few salesmen. Mr. Cummings further remarked that the Constitution and By-laws before had been drawn up by a committee consisting of an equal number of small agents and large agents and that rather than estrange the salesmen altogether, they had given them what they felt was a mere token vote.

In answer to Mr. McKenzie, Mr. MacPhee had this to say - "The Law Society consisted of university graduates who had been admitted to the bar and who were operating under an Act that was more or less self regulatory. Because of this self regulation, the Government had not found it necessary to police the legal profession but it was still considered very necessary to police the real estate business. I cannot see the similarity with the Insurance Superintendents' Conference because after all insurance agents are different from real estate agents. They are much less independent."

Mr. Kellough then advised the meeting that the committee, which had spent many hundreds of hours drafting the present by-laws which were before us for approval, consisted of equal numbers appointed from the Listing Bureau and the Real Estate Board. Mr. McKenzie then added that it had been thought that the Bureau should be set up as a corporation under the Societies Act but it was determined that this could be done with an association but not with a listing bureau. Mr. McKenzie then, addressing Mr. MacPhee, said - "If you say to Edmonton that they cannot have salesmen in their organization, then Calgary cannot have them either." Mr.



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MacPhee replied, "I agree." Mr. McKenzie then said that if salesmen were admitted to the Bureau, the Superintendent would have a much easier task to police these salesmen.

Mr. MacPhee then made reference to the Alberta Multiple Listing Bureau and pointed out that this association of bureau consisted of at least forty-eight agents and furthermore that he had heard of another independent bureau which was in the process of forming. Mr. MacPhee expressed the opinion that with numerous independent real estate groups within the City of Edmonton, it could never be said that the Edmonton Real Estate Board Co-operative Listing Bureau Limited represented all real estate agents and salesmen in the City of Edmonton, and not having a fully represented voice their proposals to the Government in the matter of real estate legislation could never be considered. Mr. MacPhee pointed out that up until eighteen months or two years ago the Edmonton Real Estate Board was having considerable success in its co-operation with the Government and quite suddenly there was a split in the ranks of the Board and considerable dissension. Mr. MacPhee said that surely the members of this Bureau must either be looking for better relations with the Government or tentatively more control through their organization of the real estate business and the people in it and less co-operation with the Government. Mr. MacPhee further said, "If you are looking for bureaucratic control of the real estate business, I am sure the Government will not allow it and, of course, neither will I. After all there can be no comparison of this Listing Bureau with any society or association which is set up on a non-profit basis. This Listing Bureau is a commercial enterprise."

Considerable discussion followed on the inclusion of associate members in the Bureau. Mr. MacPhee expressed the opinion that associate members, as contemplated by the by-laws, would not be licensed real estate men and therefore should not be members, associate or otherwise, of a real estate body. It was pointed out by Mr. Weber and others that these associate members would have no vote. To this Mr. MacPhee remarked that although they would have no vote, there would be persons in

influential positions who could use that influence, perhaps improperly, with members of the Government. Still on the subject of associate members, Mr. Sayko said that in order for appraisers to obtain membership in the American Appraisal Institute, it was necessary that they first be members of the local Real Estate Board or body and that this associate member by-law did accommodate such cases. Mr. Kellough admitted that he did not know that bankers were included as prospective associate members and it was his suggestion that they be deleted. It is the writer's impression that this was not deleted.

Reference was made to the aforementioned "split", some eighteen months or two years ago in this association and on this point Mr. Winterburn spoke. Mr. Winterburn admitted that he was a member of a certain group of agents who had called upon the Superintendent to complain of the operations of the Edmonton Real Estate Board, saying that the policy of the Board was being dictated by salesmen. Mr. Winterburn then went on to say that under the present suggested arrangement the salesmen had more or less been defranchised and that the token vote was given to them merely as a gesture to keep the salesmen happy. Mr. MacPhee then referred to Mr. Kellough's remarks concerning the many hundreds of hours that had been spent in setting up the present proposed by-laws. He said that he was quite sure that a number of members were not at all aware of what was going on and that more than one had expressed to him their surprise on learning of the proposed amended by-laws. Mr. Weber said that at an annual general meeting of the two separate groups, that is the Board and the Listing Bureau, the present committee was formed and those present at each of the general meetings agreed to abide by the deliberations of this committee. He said that there was no need for any member to be ignorant of what had been going on over the last year or so in the matter of amending the by-laws. Mr. Flewwelling corroborated this.

Reverting again to associate members, Mr. Winterburn said that he for one was willing to cut out such members and it appeared by a rather indefinite show of hands that quite a number were willing to agree with him.

opinion that the Bureau with a considerable preponderance of numbers and legal advice would have the right to sue a member of the public, and a member of the public wishing to sue one agent, member of the Bureau, would in effect have to sue all members. Mr. McKenzie said that such a situation would be unlikely to arise but it was a possibility.

The amended by-laws were run through from start to finish and various minor changes made at the suggestion of Mr. Harold Webber. None of these changes were of any signigicant consequence.

Mr. Beckhuson asked Mr. Webber if he was prepared to approve the amended by-laws. Mr. Webber said that he would approve them with the aforementioned changes.

At the close of the meeting, Mr. Cummings and one or two others remarked to Mr. MacPhee that they agreed in principle that salesmen should not be members of the Bureau. The meeting closed at 5:45 P.M.

It is the writer's opinion that the Commissioner of Real Estate should not approve or disapprove the aforementioned by-laws. The Edmonton Real Estate Board Co-operative Listing Limited is, after all, a commercial enterprise formed for the purpose of making profits and can never be considered by the Commissioner of the Government as a representative body having a voice in the regulation of real estate agents and salesmen.

In this entire issue it has been the Commissioner's fear that this Bureau was attempting to follow in the footsteps of the Vancouver Board by eventually supplanting governmental control with bureaucratic control from within the industry itself. These fears have been voiced by the Commissioner to the Bureau itself, the Deputy Provincial Secretary and the Supervisor of Co-operative Activities. The Commissioner has taken all possible steps to warn those concerned of the possible results of approval of the Bureau's amended by-laws and any further action by the Commissioner would not appear to be advisable.

K. Walker
Chief Clerk

KW/dt

Exhibit (2)

EDMONTON REAL ESTATE BOARD CO-OPERATIVE LISTING BUREAU LIMITED

SUPPLEMENTAL BY-LAWS

BISHOP, McKENZIE, JACKSON & LATTA
BARRISTERS, SOLICITORS, ETC.
EDMONTON, ALBERTA

REGISTERED
APR 8 1959
THE REGISTRAR OF
JOINT STOCK COMPANIES
PROVINCE OF ALBERTA

SUPPLEMENTAL BY-LAWS

OF THE

EDMONTON REAL ESTATE BOARD CO-OPERATIVE LISTING BUREAU LIMITED

D E F I N I T I O N S

In these By-Laws unless the context otherwise requires:

(a) "Board" means the Edmonton Real Estate Board Co-Operative Listing Bureau Limited.

(b) "By-Laws" includes the forms in the Schedules to the By-Laws, the Code of Ethics, the scale of Commissions and Fees as fixed by the Directors and approved by the Members and the Standards of Business Practice as fixed by the Directors and approved by the members from time to time, enacted together with the Standard By-Laws under the Co-Operative Associations Act;

(c) "Directors" means the Board of Directors of the Edmonton Real Estate Board Co-Operative Listing Bureau Limited;

(d) "Real Estate Business" includes the buying, selling, exchanging, renting, leasing,managing, appraising and financing, either as principal or as agent of real estate for compensation, and developing and selling land as building sites and erecting buildings for sale;

(e) "Greater Edmonton Area" shall mean City of Edmonton, Town of Jasper Place and Town of Beverly.

MEMBERSHIP

There shall be six classes of members in the Board, namely:

(a) voting agent member;

(b) voting salesman member;

(c) salesman member;

(d) non-resident member;

(e) honorary life member;

(f) associate member.

VOTING AGENT MEMBERS

Any person is eligible for membership in the Board as a Voting Agent Member who

(a) is licensed as a Real Estate Agent under the Real Estate Agents Licensing Act of the Province of Alberta.

(b) has been licensed as a Real Estate Agent in the Greater Edmonton area for a period of at least one (1) year immediately prior to the date of his application, and

(c) whose application is approved pursuant to the provisions of these By-Laws, Sections 14 to 43 inclusive.

(2) In the case of a firm, partnership or corporation

(a) membership in the Board shall be carried on the membership rolls of the Board in the Trade name of the firm, partnership or corporation but the named representative only of such firm, partnership or corporation shall exercise the rights of a Voting Agent Member, ("named representative being defined as the individual whose name appears on the Real Estate Agents license issued by the Government of the Province of Alberta who is authorized to act as the agent on behalf of the firm, partnership or corporation;

(b) the named representation in the Board of a firm, partnership or corporation is not transferable to another named representative of that firm, partnership or corporation;

(c) if a named representative of a firm, partnership or corporation is changed, the new named representative shall forthwith apply for membership as a Voting Agent member and if he fails to apply or his application is not approved, the name of the firm, partnership or corporation shall be struck off the membership roll of the Board forthwith.

(3) The Directors, in meeting, by a majority vote of those present, may reinstate the name of the firm, partnership or corporation whose name has been struck off the membership roll of the Board, if it submits within SIXTY DAYS of its being struck off, a new named Representative whose application is approved.

(4) In the case where a new named Representative of a firm, partnership or corporation applies for membership in the Board, he shall be deemed to have been a licensed Real Estate Agent for a period of one year in accordance with Section 3, Subsection (1), Clause (b) if

(a) He has been employed by the firm, partnership or corporation for a period of one year or more immediately prior to application and

(b) the firm, partnership or corporation has been licensed under the Alberta Real Estate Agents Licensing Act for a period of one year or more immediately prior to application.

(5) The Directors, by a two-thirds majority vote of those present and voting at a meeting of the Directors, may waive the requirement of having been a licensed Real Estate Agent in the Greater Edmonton Area for a period of one year or more as required by Section 3, Subsection (1) Clause (b), in the case of a person applying for Voting Agent membership who has held for not less than one year immediately prior to application

(a) not less than a one-third interest in a Real Estate business operated by an individual, or

(b) not less than a one-third interest in a Real Estate business operated by a partnership of which he is a partner, or

(c) not less than one-third of the voting shares or stock in a Real Estate business operated by a corporation.

(6) Any change in the ownership of a business, partnership in a partnership or officers in a corporation shall be reported forthwith to the Secretary of the Board. Such report shall be in writing.

Only voting agent membership shall carry with it the rights and obligations of and for the services rendered through the Photo Listing Services of the Board.

SALESMAN MEMBER

Each employee of a Voting Agent member who:

(a) is licensed under the Real Estate Agents' Licensing Act; and

(b) has been continuously employed since obtaining his license for a period of six months by a voting agent member;

is eligible for membership as a salesman member subject to the requirements of these by-laws.

Each voting agent member who employs any person eligible for membership as a salesman member shall be responsible:

(a) to present an application for membership for each eligible salesman employed by him forthwith after the salesman becomes eligible for membership, and

(b) for collecting and remitting to the Board the prescribed entry fees and dues payable to the Board on behalf of each such applicant for salesman membership; and

(c) for obtaining execution by the applicant of the covenants, undertakings, and waiver of claims set out in Schedule I hereto, and such other forms as the Board may from time to time require; and

(d) to terminate the employment of any salesman eligible for membership in the Board as a salesman member who declines to apply for membership or whose application for membership is rejected, or who is suspended or expelled from membership by the Board.

1) A salesman member may serve and vote on all committees of the Board to which he may be elected or appointed, except as hereinafter provided in this Constitution.

2) A salesman member may vote:

(a) for the election of voting salesman members;
(b) for the election of two voting salesmen members as Directors.

(3) A salesman member shall not have the right to vote:

(a) for the election of voting agent members as directors, or
(b) in an election to elect voting salesman members, after there has been elected in that election one voting salesman member employed by the partnership or corporation or Voting agent member who employs him, but this shall not prevent the nomination and election by the remaining salesman members of two or more voting salesman members employed by the same partnership, corporation or voting agent member.

(4) A salesman member, other than a voting salesman member, shall not have the right to vote:

(a) for the election of officers;
(b) on amendments to the Constitution of the Association, including the application and the by-laws;
(c) on any matter pertaining to the finances of the Association.

VOTING SALESMAN MEMBER

(1) The salesman members may nominate and elect from their membership voting salesman members in accordance with the conditions set out in this section.

(2) One voting salesman member may be elected for each FIFTY salesman members, PROVIDED HOWEVER, the ratio of voting salesman members to voting agent members be ONE (1) voting salesman member to EIGHT (8) voting Agent members.

(3) Only a salesman member who has been a LICENSED SALESMAN for THREE (3) full years is eligible for nomination and election as a voting salesman member.

(4) Each salesman member elected as a voting salesman member shall be elected for a ONE (1) year term, but he may be re-elected for a second or subsequent terms.

A voting salesman member:

(a) has the right to vote on all matters before the Association to the same extent as a voting agent member except that in the case of election of directors voting salesman members vote for salesman directors only and voting agent members vote for agent directors only;

(b) shall be eligible to serve as a director or officer of the Board.

ASSOCIATE MEMBER

(1) Any licensed Real Estate Agent in the Greater Edmonton Area, who is unable to qualify as a voting agent member as set out under Section 3, or any trust company, loan company, mortgage company or any branch thereof, and any person or financial agent representing such a company, and any person or corporation engaged in the business of a valuator or appraiser of real estate is eligible for associate membership

in the Board, subject to the terms of these by-laws, whether or not the activities of such person or corporation are such as to require them to be licensed under the Real Estate Agents' Licensing Act of the Province of Alberta.

(a) An associate member shall not have the right to vote, and shall not have the right to hold office.

NON-RESIDENT MEMBER

1. A person residing in Alberta outside the Greater Edmonton Area and carrying on business as a licensed real estate agent, may make application to the Board for a non-resident membership, whether such person is a member of a firm or partnership or a director or officer of a corporation engaged in the real estate business or a manager having a financial interest in such business or a salesman in the permanent employ of such a business.

2. Non-resident members are not entitled to vote, or to hold office as Directors. or to act on committees.

HONORARY LIFE MEMBERS

3. (1) The Directors may elect any person who has rendered outstanding service in any way to the real estate business as an honorary member by unanimous vote of those present at a director's meeting regularly called, provided at least FIVE (5) days notice of the name of the person to be elected has been given to each director.

(2) An honorary life member shall have all the rights and privileges of membership but shall not be required to pay membership dues.

APPLICATION FOR MEMBERSHIP

4. Each application for membership shall:

(a) be made in writing to the Secretary.
(b) be made on the form from time to time approved by the Directors, giving the details, information and particulars requested therein in full;
(c) be signed by at least two voting agent members of the Board as proposer and seconder respectively, except in the case of an application from a salesman for membership when only one voting agent member is required as a proposer.

5. Each applicant shall sign the covenants, undertakings and waiver of claims set out in Schedule I hereto, containing among other things;

(a) an irrevocable waiver of claim against the Board or any director, officer, member or agent thereof for any act done in connection with the business of the board and particularly as to its or their acts in electing or failing to elect him as a member or disciplining him as a member or expelling him from membership;

(b) An undertaking to observe the by-laws, the Code of Ethics, and the rules of professional conduct of the Board and acknowledging that he has read and thoroughly understands the same.

(c) an undertaking to submit disputes with any other member over commissions or any other matter the Directors may consider appropriate for arbitration by the Arbitration Committee and to accept the Arbitration Committee's decision as final and binding.

(1) Each application for membership shall be mailed or personally delivered, addressed to the Secretary of the Board at the offices of the Board.

(2) Each application shall be accompanied by:

(a) The covenants, undertakings and waiver of claims in the form set out in Schedule I hereto; and
(b) cash or cheque payable to the Board covering the entrance fee and/or annual dues from time to time fixed by the Directors and approved by the membership in accordance with these by-laws.

The Board may require that any new applicant for membership, whether as a voting agent member or as a salesman member, shall:

(a) write and pass such examinations as may be set by the Board; and
(b) take such courses as may be provided by the Board.

In the case of an application for membership as a voting agent member, the applicant shall also submit:

(a) a signed statement in the form set out in Schedule II that he has now and will maintain an office in accordance with the minimum requirements, as defined in the said form as follows:

(1) that I will maintain at all times an office that meets with the approval of the Commissioner of Real Estate;
(2) that the said office will be so situated that the Public will have direct access thereto at all times during ordinary business hours;
(3) that I will have at least one desk and telephone for my personal use and one desk for each salesman that I employ, together with at least one telephone or extension thereof for every two salesmen employed.
(4) that I will provide proper filing facilities for the filing and recording of the transactions of my firm.
(5) I hereby state that I now have an office that meets with the above requirements located at _____

(b) a signed covenant in the form set out in Schedule II, that he maintains the necessary records and real estate trust account as required by the Real Estate Agents' Licensing Act;

(c) a signed covenant in the form set out in Schedule II, to terminate the employment of any salesman eligible for membership in the Board as a salesman member who declines to apply for

membership, or whose application for membership is rejected, or who is suspended or expelled from membership by the Board;

(d) "Certificate of Solvency" signed by the Auditors of the Edmonton Real Estate Board Co-Operative Listing Bureau Limited or by a firm of Chartered Accountants, which certifies that the applicant's current assets are equal to or exceed the applicant's current liabilities on an audited financial statement of the applicant within the immediately preceding 12 months and that the applicant maintains a real estate trust account which is not impaired and is in proper order.

For the purpose of obtaining a "Certificate of Solvency" an applicant for voting agent membership may deliver directly to the Auditors of the Board the most recent audited financial statement of the applicant covering a complete fiscal year.

The applicant's audited financial statement shall be treated as confidential and privileged information in the hands of the Auditors of the Board.

The contents of the applicant's financial statement shall not be made known by the Auditors to any director or member of the Board, or to any other person without written authorization of the applicant.

If the Auditors of the Board are unable to issue a Certificate of Solvency to an applicant his financial statement shall be returned to him by the said Auditors and the Auditors shall advise the directors that they are unable to issue a Certificate of Solvency to the applicant, and the directors shall advise the Commissioner of Real Estate of this fact.

An applicant for membership as a voting agent member instead of applying to the Auditors of the Board for a Certificate of Solvency may provide a Certificate of Solvency signed by a firm of Chartered Accountants if such certificate is in the form approved by the Board.

If an applicant is unable to produce a Certificate of Solvency the directors shall refuse the application for membership.

(1) Each application for any class of membership, together with the names of the proposer and seconder, shall be submitted by the Secretary; and

(a) to the membership committee for its consideration; and
(b) by mail to each member of the Board.

(2) In the case of a Voting Agent member, the Secretary shall obtain a Credit Report on the applicant for consideration of the Board of Directors.

The membership committee shall:

(a) Make such investigation covering an applicant as appears necessary in their discretion; and
(b) submit its recommendations to the directors.

Any member who desires to make any comments concerning the desirability or otherwise of admitting an applicant to membership may submit his comments in writing to the Directors who shall treat such comments as strictly confidential and shall not disclose the same to any person.

28. No application for membership shall be dealt with by the Directors until

(a) the Directors have received the report of the membership committee; and
(b) at least SIX (6) days have elapsed from the date of mailing to the membership, notice of the said application.

29. The Directors shall consider each application, together with the report of the membership committee, and such letters as may have been received from the membership approving or disapproving the application, and in their discretion may approve or reject any application, and in particular without limiting the generality of the foregoing they shall reject an application if in their opinion:-

(a) the principal business interest of the applicant is some other business than the real estate business, or the real estate and insurance business, or

(b) the applicant is controlled directly or indirectly by an individual partnership or corporation which holds a controlling interest in one or more other firms, partnerships or corporations and which already has one named representative as a voting agent member, which named representative shall be deemed to represent the combined interest of the several firms, partnership or corporations which are so controlled

30. If an application is approved by a two-thirds majority vote of those directors present at a regularly called directors meeting the applicant shall be declared elected to membership in the Board.

31. If a third or more of the votes are dissenting, the application for membership shall be refused, but in such case it may in the discretion of the Directors be referred to the whole membership.

32. If an application for membership is referred by the Directors to the membership it shall be voted upon by secret ballot of the members at the next regular meeting of the membership.

33. The ballots on such an application shall be counted immediately following the meeting by three members of the membership committee, or in the absence by three members of the Board selected by the Chairman of the meeting who shall be assisted in either case by the Secretary if present.

34. If thirty-three and one/third (33 1/3) percent of the votes cast on any such application are opposed to the admission of the applicant, then the application shall be rejected.

35. The Secretary shall notify each applicant whether his application is accepted or rejected not later than ONE (1) WEEK following the meeting of the Directors at which it is dealt with, or not later than ONE (1) WEEK following the holding of the ballot as the case may be.

36. Where an application for membership as a salesman member is rejected, the Secretary shall notify in writing both the applicant and the agent member who employs the applicant that:

(a) the application for membership is rejected; and
(b) the employment of the applicant as a real estate salesman by the voting agent member shall be terminated effective not later than THIRTY (30) days following the date the Secretary's notice is dated and mailed.

The voting agent member shall terminate the employment of each salesman whose application for membership is rejected as soon as reasonably possible, and in any event, termination shall be effective not later than THIRTY (30) days following the date of the Secretary's notice that the application for membership was rejected.

The number of votes for and against any application shall be treated as confidential in the hands of the Secretary and the Directors and shall not be disclosed to members of the Board.

Membership in the Board is personal and not transferable except with the approval of the Board of Directors.

All classes of members, other than associate members and honorary life members shall hold a license in good standing under "The Real Estate Agents' Licensing Act" for the Province of Alberta or such other act or regulation as may from time to time be substituted therefor entitling the person to transact the business of real estate in the Province of Alberta as a real estate agent or as a real estate salesman.

When an applicant is elected to membership by the Directors, the Secretary shall issue a Certificate of Membership in the name of the applicant, bearing the signatures of the President, and the Secretary.

Each member shall display his Certificate of Membership conspicuously in his place of business.

Each Certificate of Membership is the property of the Association and the person to whom it is issued shall return it to the Secretary upon termination of his membership.

MEMBERSHIP FEES AND DUES

ENTRANCE FEES

(1) The entrance fee for a Voting Agent Member, including co-operative listing services, shall be $500.00, or such other fee as may be determined from time to time by the Directors and approved at a general meeting by a two-thirds majority vote of the voting members.

(2) Entrance fees shall be payable in advance at the time of submission of the application for membership, and are non-returnable after the applicant has been approved by a two-thirds majority vote of the Directors or as otherwise provided in this constitution.

(3) Entrance fees tendered by unsuccessful applicants shall be returned in full to such applicants within thirty (30) days of the rejection of the application.

(4) Membership in the Board is not transferable.

(5) The Directors by a two-thirds majority vote of the Directors present at a duly called Directors' Meeting, may waive payment of the Entry Fee in the following cases:

(a) where an individually licensed Real Estate Agent sells his business to another individual who applies for membership and who meets all the qualifications for eligibility for membership in the Board.

(b) where an individually licensed Real Estate Agent becomes a member, with at least a one-third interest, in a partnership or where he incorporates as a corporation, holding at least one-third of the voting stock of that corporation;

(c) where there is a change made in the named representative of a partnership or corporation and the new named representative applies for membership and meets all of the qualifications for membership in the Board.

(6) The Directors may, under other special circumstances recommend to a duly called General Meeting of the Board that payment of an Entrance Fee be waived and the same may be waived by a two-thirds majority vote of the voting agent members and voting salesmen members present at the general meeting by secret ballot.

(7) The entrance fee that may be charged from time to time is not under any circumstances refundable.

ANNUAL DUES

(1) The following annual dues shall be paid

(a) Voting Agent Member, including co-operative listing services..... $30.00

(b) Non Resident Member, excluding co-operative listing services..... $30.00

(c) Associate Member, excluding co-operative listing services..... $30.00

(d) Salesman Member..... $11.00

until otherwise determined from time to time by the Board of Directors and approved by the general meeting of the voting members.

(2) Annual dues cover the calendar year and are payable annually in advance, and not later than the 1st of February in each year, and dues shall not be pro rated.

The Secretary shall send to each member a notice stating the amount of the annual dues, which notice shall be sent approximately ONE (1) MONTH before the end of each calendar year.

If annual dues are not paid on or before the 1st of February, or if any other amount due to the Board is not paid within THIRTY (30) DAYS from the date of rendering of a statement therefor by the Secretary, the Secretary shall send a statement of account bearing the notation "delinquent notice" in red ink.

If a member fails to pay an account owing to the Board within a period of TWO (2) WEEKS from the date of the delinquent notice he shall cease to be a member in good standing and his membership shall automatically be suspended until such time as the amount is paid.

The Secretary shall forthwith mail to the member by registered mail a notice of his suspension, together with a copy of such of these by-laws as relate to the payment of fees.

If the suspended member fails to pay the amount due within THIRTY (30) days from the date of notice of suspension, he shall be automatically expelled from the Board but such expulsion shall not wipe out or discharge any debt due to the Board.

Any member suspended or expelled for non-payment of dues or fees may be reinstated:

(a) upon paying in full all amounts owing to the Board; and
(b) upon reinstatement being approved by a two-thirds majority vote of the directors.

Entrance fees and annual dues shall be deemed to be paid for membership privileges only and no member shall have or acquire any vested interest or property rights in the Board or its property.

RESIGNATION OF MEMBERS

Any member may tender his resignation at any time and such resignation shall be considered by the first meeting of the directors following receipt of the resignation.

A resignation from membership shall become effective when accepted by the directors.

The resignation of a member from the Board shall not relieve or discharge him from any indebtedness to the Board for unpaid dues, assessments or other sums owing.

EXPULSION OF MEMBERS

(1) The Board of Directors by a two-thirds majority vote have power to Fine, Suspend, Expel or otherwise discipline a member.

(2) The member shall be given an opportunity for a hearing and may be represented at such a hearing by another member in good standing but cannot be represented by anyone other than a member in good standing.

(3) The Directors may expel or suspend from membership in the Board any member who:

(a) has a receiving order made against him or has made an assignment for the general benefit of his creditors pursuant to the bankruptcy act;

(b) employs or continues to employ a licensed real estate salesman whose application for membership has been refused by the Board;

(c) has been found guilty of:

(i) acting in such a manner as to bring the real estate business or the name of this Board into disrepute;
(ii) careless, incompetent, or unethical dealings unbecom. to a member of this Board;
(iii) wilfully violating any Rules, Regulations, By-Laws or Code of Ethics of this Board;
(iv) any crime involving moral turpitude.

(d) has his Real Estate License suspended or cancelled.

DIRECTORS

(1) The government and administration of the Board shall be vested in ELEVEN (11) Directors elected from the membership of the Board as hereinafter provided and the Immediate Past President who shall hold office ex officio.

(2) The Board of Directors shall consist of:

(a) NINE Voting Agent Members elected as hereinafter provided.

(b) TWO Voting Salesmen Members elected as hereinafter provided.

Except as otherwise provided the Directors shall exercise all the powers of the Board.

The President may be either a voting agent member or a voting salesman member.

The Vice-President may be either a voting agent member or a voting salesman member.

The President and the Vice-President shall be elected annually by a majority vote of the directors for a one year term.

(1) Voting salesmen members may be elected as hereinafter provided to serve on the Board of Directors providing that no more than TWO (2) such voting salesmen members serve as directors at any one time.

(2) Where the Immediate Past President is a voting salesmen member he shall serve as the Immediate Past President as hereinbefore provided, but in this event there may only be ONE (1) voting salesman member serving as a Director.

No real estate firm at any time may be represented by more than one director whether the director is a voting salesman member or a voting agent member.

If any director changes from one real estate firm to another during his term of office:

(a) he shall remain in office if his new firm is not at that time represented by a director; or
(b) he shall be deemed to have resigned from office as a director if his new firm is already represented by a director.

65. THREE (3) Voting Agent Members shall be elected as directors in each year and each of the THREE (3) shall serve for a term of THREE (3) years.

66. At the first election NINE (9) Voting agent members shall be elected as directors, THREE of whom shall serve for a THREE (3) year term, THREE (3) of whom shall serve for a TWO (2) year term and THREE (3) of whom shall serve for a ONE (1) year term, the longest terms being held by the directors receiving the highest number of votes.

67. TWO voting salesmen members shall be elected as directors in each year by the salesmen members, and the directors so elected shall serve for a ONE (1) year term, except as provided in Section 62.

NOMINATIONS

68. In each year the directors shall appoint a voting agent members nominating committee at least FOUR (4) weeks before the annual meeting.

69. The voting agent members nominating committee shall nominate at least THREE (3) voting agent members to fill the THREE (3) voting agent members vacancies in the directorate in that year and shall obtain the consent in writing of each candidate nominated.

70. Any other voting agent member of the Board may be nominated as a director by a nomination paper in writing, signed by at least FIVE (5) voting agent members of the Board in good standing, bearing the consent in writing of the candidate to the nomination, which nomination paper may be submitted at any time, either before or during the annual meeting prior to the voting.

71. Voting for the election of the THREE (3) voting agent member directors shall be done by secret ballot at the annual meeting and such ballots shall be counted by not less than TWO (2) scrutineers appointed by the chairman of the annual meeting.

72. In the case of a tie vote in any election, another secret ballot shall be called to determine the will of the majority as between the candidates who were tied.

73. Vacancies in the directorate shall be filled by appointment made by the directors until the next annual meeting at which time a member shall be elected to fill the directorship for the remaining year, or years if any, of the unexpired term.

ELECTION OF PRESIDENT AND VICE-PRESIDENT

74. The Nominating Committee, as appointed under Section 68 hereof, shall submit to the first meeting of the Board of Directors nominations for President and Vice-President respectively.

75. Any two members of the Board of Directors may submit further nominations for the offices of President and Vice-President, providing they submit a nomination paper in writing, signed by them, to the first meeting of the Board of Directors and providing they have the consent in writing of the candidate or candidates for nomination.

The Board of Directors shall within THREE (3) days of the date of the Annual meeting hold their first Board of Directors meeting and shall at that meeting elect a President and Vice-President from amongst their number by a majority vote of those present at such a meeting.

DUTIES OF THE PRESIDENT

The President shall:

(a) preside at all meetings of the directors of the Board
(b) exercise general supervision and direction over the business of the Board;
(c) direct the efforts of the Board towards the achievement of its objects and the enforcement of its by-laws;
(d) declare and fill vacancies occurring on any committee for any reason, such appointments to be confirmed at the next meeting of the directors.
(e) appoint temporary substitutes for members temporarily unable to act on any committee for such time as the inability may exist;
(f) ex officio be a member of all committees and shall receive notice of all committee meetings.

DUTIES OF THE VICE-PRESIDENT

In the absence of the President, the Vice-President shall perform the duties of the President.

DUTIES OF THE IMMEDIATE PAST PRESIDENT

The Immediate Past President shall advise the directors and attempt to obtain and facilitate continuity of policy and may vote on any matter before the directors.

DUTIES OF THE EXECUTIVE SECRETARY

The Secretary shall:

(a) manage the offices of the Board, subject to the control of the directors.
(b) act as manager of the business and affairs of the Board and carry out such policies as may be laid down from time to time by the directors.
(c) work with and assist the President and the directors;
(d) keep minutes of the meetings of the directors and minutes of general meetings of the Board;
(e) keep proper books and records of the affairs of the Board which books and records shall be open for examination by any member during the ordinary business hours at the offices of the Board.
(f) give notice of all meetings of directors and all meetings of members to the directors or the members as the case may be;
(g) have custody of the seal of the board, and ensure that the same is affixed to any document only when authorized by resolution of the directors;
(h) perform such other duties as may be prescribed from time to time by the directors.

DUTIES OF DIRECTORS

The Directors shall:

(a) meet to consider and transact the business of the Board at the call of the President, the Vice-President, or the Secretary;
(b) have charge of the general conduct of the affairs of the Board and conduct the business of the Board in accordance with the by-laws;
(c) keep the membership reasonably and properly informed on all matters of concern to the membership in respect of the real estate business;
(d) secure and represent the views of the membership on all matters affecting the real estate business and on matters of civic, provincial or national interest;
(e) enforce the provisions of the by-laws, the schedule of commissions, fees and charges, the standards of business practice, and the code of ethics of the Board.

SEVEN (7) Directors present at any meeting shall constitute a quorum.

Decision of the directors shall be established by a majority vote of those present and voting on any question unless otherwise provided herein.

Only in the case of a tie shall the President cast the deciding vote.

The Directors shall meet regularly at such times as they may from time to time affix, but not less than TEN (10) times in each year.

The Directors in their discretion by resolution may expel any director who is absent without excuse deemed reasonable by the Directors from THREE (3) consecutive meetings or is absent from a substantial number of meetings and shall appoint a member as a Director to fill the vacancy thereby created.

The Directors may appoint or employ an Executive Secretary and may designate his duties, functions and remunerations.

The Directors may employ such other persons as they deem necessary or expedient to properly conduct the activities of the Board and designate their remuneration.

The Executive Secretary and any other persons in the employ of the Board shall furnish Surety Bonds in such amounts as the Directors deem necessary or advisable, the cost of which shall be paid out of the funds of the Board.

The Directors may retain legal counsel to advise the Board and perform such other professional services as the Directors may require.

The Directors shall administer the finances of the Board.

The Directors shall not:

(a) incur any obligations or authorize any expenditures in excess of the funds in the treasury of the Board; or

(b) borrow on behalf of the Board; or
(c) receive any remuneration for their services as directors;

without the approval of the Board, granted by a general meeting of the members called for that purpose.

The Directors shall have the jurisdiction and supervision over all disciplinary action taken by the Board or any committee thereof.

The Directors may reprimand, suspend, expel, make a monetary assessment against or otherwise discipline in their discretion any member of the Board who breaks or fails to observe any by-law of the Board or the Code of Ethics or is guilty of conduct which in the opinion of the Directors will tend to cause discredit to fall upon the Board or upon the real estate business.

The Directors by a two-thirds majority vote of those present at any regularly called Directors' meeting may require a member to file with the Auditors of the Board a financial statement or to produce a Certificate of Solvency.

If any member within THIRTY (30) days after receipt of a written request from the Directors fails to file a financial statement with the Auditors of the Board or fails to produce a Certificate of Solvency, the Directors may suspend or expel the said member.

If the Directors suspect that any member of the Board has infringed these by-laws or if the Directors in their discretion otherwise deem it advisable, the Directors may require an audit to be made of the books of account of any member of the Board, which audit shall be conducted by the Auditors of the Board.

If the result of the audit discloses compliance by the member with these by-laws and the provisions of the Real Estate Agents' Licensing Act the information obtained in the audit shall not be communicated by the Auditors to anyone and the cost of the audit shall be borne by the Board.

If the result of the audit discloses irregularities or non-compliance by the member with the by-laws of the Board, the Auditors shall communicate to the Directors full particulars of the irregularity and non-compliance and the cost of the audit may be assessed by the Directors against the member.

If the member whose books of account are directed to be audited refuses to produce for the inspection of the Auditors all his books of accounts, ledgers, vouchers and records relating thereto or fails to co-operate in a reasonable way with the conduct of the audit, then the Directors may suspend or expel the said member from membership.

The Directors may delegate to standing committees or to special committees such of their functions as the directors may from time to time determine.

The President with the approval of the Directors shall appoint all committees excepting:

(a) Past Presidents' Committee
(b) Salesmen's Committee
(c) The Photo Listing Committee

which Committees shall be set up as hereinafter provided.

The President shall be notified of all committee meetings and shall have the right to attend their sessions and take part in their discussions and to vote.

Committees shall consist of such number of members as the Directors may determine and shall be appointed for such term not in excess of ONE (1) year as the Directors may determine.

Each committee shall report to the Directors when required to do so and annually to the Board.

All actions of Committees shall be subject to the approval of the Directors.

Any member of a Committee who remains absent from THREE (3) consecutive meetings of the Committee without reasonable cause, may have his appointment to the committee terminated and may be replaced by the Directors in their discretion.

At any Committee meeting a majority of the Committee shall constitute a quorum.

STANDING COMMITTEES

At all times there shall be ELEVEN (11) standing committees as follows:

1. Membership Committee
2. The program and attendance committee
3. The legislation committee
4. The publicity committee
5. The educational committee
6. The by-laws, standard forms and practices committee
7. The ethics committee
8. The arbitration committee
9. The Past Presidents' committee
10. The salesmen's committee
11. The Photo Listing committee

THE MEMBERSHIP COMMITTEE

The membership committee shall:

(a) encourage and promote Membership in the Board and plan and conduct the membership campaigns;
(b) investigate the eligibility and qualifications of applicants and report in writing their approval or disapproval of each applicant to the Directors;
(c) stimulate interest of the members in the work of the Board.

THE PROGRAM AND ATTENDANCE COMMITTEE

The Program and Attendance committee shall:

(a) provide and be responsible for programs, discussions, speakers and entertainment which it considers to be in the best interest and welfare of the Board;
(b) check and record attendance at general meetings of the Board whether annual or special;

(c) encourage attendance at general meetings by such means as appear effective, including giving special reminders and invitations to attend to members who are regularly absent.

Each member of the Program and Attendance committee may be allocated a designated section of the membership as his responsibility.

THE LEGISLATION COMMITTEE

The Legislation Committee shall safeguard and promote the interests of real estate agents and salesmen before all legislative and administrative bodies whether municipal, provincial or federal and shall perform such duties pertaining to legislation and regulations as the Directors may refer to it.

THE PUBLICITY COMMITTEE

The Publicity Committee shall assemble and secure the publication of information relative to the affairs of the Board and real estate business generally.

THE EDUCATIONAL COMMITTEE

The Educational committee shall:

(a) be responsible for all matters relating to the education of the members in connection with the real estate business;
(b) make recommendations to the Directors in all matters of an educational nature;
(c) arrange educational courses and lectures from time to time with the authority of the Directors;
(d) supervise the library of the Board and assist the Secretary in maintaining the library in an up-to-date and useful condition so that it may be readily referred to by the membership.

THE BY-LAWS AND STANDARD FORMS AND PRACTICES COMMITTEE

The By-Laws and Standard Forms and Practices Committee shall:

(a) examine and report to the Directors on any proposed amendments to the by-laws, the commission schedule, the standards of business practice and the Code of Ethics.
(b) examine and report to the Directors on any suggested amendments of existing forms and to suggest, examine and report on new forms and changes in existing forms, for the benefit of the Board or any part thereof.

The Board of Directors may, at their discretion, from time to time adopt certain standard forms used in the real estate profession which forms shall bear the Realtor crest and once printed these forms shall not be changed or altered, in any way, by additional printing of any kind, except by adding the Realtor's name, address and 'phone number. For purpose of clarification of this section of the By-Law, "printing" shall not be meant to include any written or typewritten alteration or addition to any standard form.

THE ETHICS COMMITTEE

The Ethics Committee shall consider and deal with the complaints relating to infringement of the by-laws, ethics, commission charges, fees, and deal with discipline of members as hereinafter provided in these by-laws.

THE ARBITRATION COMMITTEE

The Arbitration Committee shall adjudicate complaints arising from differences between members and commission disputes which are referred to it by the Directors in accordance with the procedure hereinafter set out in these by-laws.

THE PAST PRESIDENTS' COMMITTEE

The Past Presidents' of the Board shall constitute the Past Presidents' Committee.

The most recent Past President available to act shall convene the Committee within THIRTY (30) days after each annual election, when the committee shall elect its own Chairman.

The Directors may refer any matter to the committee for its consideration and advice and the committee may make recommendations to the Directors upon any matter in the interests of the Board.

THE SALESMEN'S COMMITTEE

(1) The salesmen's committee shall be composed of all salesmen members in good standing in the Board.

(2) The salesmen's committee within the 15 days immediately prior to the annual meeting of the Board, shall elect annually from amongst its members:

(a) a Chairman and a Vice-Chairman;
(b) the voting salesman members in accordance with conditions set out in Section 8, Sub-sections (1) to (4) inclusive;
(c) two voting salesman members as Directors of the Board for a one year term in accordance with Section 67.

The Committee shall meet at least twice annually at the call of the Chairman, or in his absence, the Vice-Chairman.

The Committee shall deal with any matters of particular interest to the salesman members, subject always to the approval of the Board of Directors.

THE PHOTO LISTING COMMITTEE

The Photo Listing Committee shall consist of a Chairman, who must be a Voting Agent Member Director of the Board and SIX (6) other members, FOUR (4) of whom shall be Directors of the Board and the other TWO (2) shall be Voting Members chosen from the membership at large.

26. The Chairman and each individual member nominated to the Committee shall be appointed by the Board of Directors by a majority vote thereof.

27. The Photo Listing Committee shall conduct all business relating to the Photo Listing Service.

28. The Committee shall, from time to time, make rules and regulations for the conduct of a Photo Listing system, and prescribe forms and tariff schedules, which rules and regulations shall upon publication and distribution to the members be binding upon the members of the Board.

29. The existing forms, tariff schedules, rules and regulations presently used respecting the Photo Listing system are hereby adopted.

30. The Chairman shall report monthly to the Board of Directors concerning the operations of the affairs of the Photo Listing Service and shall make a report to the annual meeting.

31. In the absence of the Chairman of the Committee, the remaining Directors who are members of the Committee may appoint a Chairman pro-tem.

32. The Committee shall be permitted to make all the expenditures necessary for the administration of the system; provided, however, that any contract involving an expenditure over ONE THOUSAND ($1,000.00) Dollars shall not be entered into or made, unless first approved by the Directors.

SPECIAL COMMITTEES

33. The President, with the approval of the Directors, may from time to time appoint special committees to perform special duties.

ETHICS COMMITTEE

34. The Ethics Committee shall consist of FIVE (5) or more members in the discretion of the Directors and one of the Directors shall be named as the Chairman of the Ethics Committee.

35. The Ethics Committee shall investigate disputes as between members, or as between members of the Board and non-members regarding matters of ethics, business conduct and complaints relating to infringement of by-laws, standards of business procedure, ethics, commission charges and fees and any other matter that may be referred to it by the Directors.

36. The Chairman of the Committee may assign any THREE (3) members to consider and deal with any complaint.

37. Where the Chairman has referred a matter for investigation to THREE (3) or more members of the Committee and the members after preliminary investigation consider the matter to be of a particularly serious nature, then the members shall report to the Chairman who may direct that the matter be dealt with by the entire Ethics Committee.

38. The Ethics Committee shall consider and deal with each matter referred to it as quickly as is reasonably possible.

139. The Ethics Committee in its discretion may obtain and consider evidence from parties and witnesses by any or all of the following means:

(a) signed statements in writing which are not sworn;
(b) affidavits or statutory declarations;
(c) oral evidence which is not sworn; and
(d) oral evidence on oath or affirmation.

140. The Committee may request any person submitting evidence in writing to supply such number of copies as the Ethics Comnitee may designate.

141. In any case where the Ethics Committee decides to hear oral evidence each member concerning whom any complaint has been made shall be entitled to be present and to question any witness.

142. Unless the member whose conduct is complained of consents to lesser notice the Ethics Committee shall give at least FIVE (5) days notice in writing of the date, time and place of each sitting of the Committee to hear evidence, and each member whose conduct is complained of shall have a reasonable opportunity to attend if he so desires.

143. Where one member of the Board makes a complaint against another member of the Board, the Directors in their discretion may require the complainant to pay to the Board the sum of TWENTY-FIVE DOLLARS ($25.00) before the Directors refer the matter to the Ethics Committee for investigation.

144. In such case if the Ethics Committee finds the complaint to be justified the Directors shall refund the sum of TWENTY-FIVE DOLLARS ($25.00) to the complainant.

145. In the event that the complaint is found not to be justified by the Ethics Committee then the Directors in their discretion may either refund the Twenty-Five Dollars ($25.00) to the complainant or may direct all or any part of the said sum to be credited to the general fund of the Board.

146. The Directors in their discretion and in the absence of any complaint from a member or other person may instruct the Ethics Committee to make such investigations of any member as the Directors deem necessary to ascertain whether there has been any breach of a by-law or of the Code of Ethics.

147. The Ethics Committee may call before it any member of the Board who shall produce such documents and records as may be requested by the Committee within a reasonable period of time to be determined by the Committee, and answer questions relating thereto.

148. If the Ethics Committee finds that the conduct of any member has given reasonable ground for complaint then the Ethics Committee shall recommend disciplinary measures to the Board, which measures may include that the member in question be reprimanded, be suspended, be directed to take corrective action, be ordered to pay a monetary assessment to the Board, be expelled, or be otherwise disciplined.

The findings and recommendations of the Ethics Committee shall be in writing and shall be signed by the members who investigated the matter.

The findings and recommendations of the Ethics Committee shall be forwarded to the Secretary who shall mail or deliver a copy thereof to each of the Directors and the same shall be considered and dealt with at the next ensuing meeting of the Directors.

The Directors shall consider the findings and recommendations of the Ethics Committee and may in their discretion:

(a) hear and consider any representations the member whose conduct is complained of may desire to make;
(b) hear and consider representations from the Ethics Committee; and
(c) take such disciplinary measures as set out in Section 148 hereof as the Directors deem proper;
(d) authorize the Secretary to communicate the findings of the committee and the decision of the Directors to the complainant and to the member concerning whom the complaint was made.

2. Where the Directors deem it proper to do so they may instruct a member found guilty of a complaint by the Ethics Committee to take such remedial action as may be required to correct the matter of the complaint, or to bring about a satisfactory and fair settlement of the matter of the complaint, and may allow the member a reasonable period of time which may be fixed by the Directors to carry out the action recommended by them.

3. If the member satisfactorily carries out the instructions of the Directors to correct the matter of the complaint or to reach a satisfactory and fair settlement, then upon acceptance by the member of such other monetary assessments or disciplinary measures as the Directors in their discretion may impose, a member found guilty of the complaint may be continued as a member in good standing.

4. Members may if they wish be represented at the Committee hearing by another member in good standing but cannot be represented by anyone other than a member in good standing.

APPEAL

5. A member of the Board who has been suspended, expelled or otherwise disciplined by the Directors, has the right to appeal the decision of the Directors to a general meeting of the members of the Board but the decision of the Directors shall not be varied unless a majority vote by secret ballot of the voting agent members and voting salesman members present at a general meeting instructs the Directors to do so.

ARBITRATION COMMITTEE

6. The Arbitration Committee shall consist of FIVE (5) or more members in the discretion of the Directors, and ONE (1) of the voting agent member Directors shall be named as Chairman of the Committee.

No member of the Arbitration Committee shall serve as an arbitrator in any dispute if he has a personal or a financial interest in the dispute, or if he is the employer, the employee, or a business associate of any party to the dispute.

All commission disputes arising between members of the Board shall, unless otherwise directed by the Board of Directors, be settled by arbitration by the Arbitration Committee rather than by resorting to suit at law and the decision of the Arbitration Committee shall be final and binding upon all parties to the dispute.

Forthwith after the Directors refer any matter to the Arbitration Committee, the Secretary shall:

(a) obtain from the member reporting the complaint and from the member concerning whom the complaint is made a "Consent to Arbitration" signed by each of the said members; and
(b) obtain from the complainant the sum of TWENTY-FIVE DOLLARS ($25.00), and in no case shall the Arbitration Committee commence to act until all of the above requirements have been complied with.

If any member of the Board declines to sign the "Consent to Arbitration" the Directors may suspend or expel such member or take such other disciplinary action as the Directors may consider proper.

The "Consent to Arbitration" shall be in the form set out in Schedule III to these by-laws or in a similar form acceptable to the Directors.

The Arbitration Committee has jurisdiction and shall arbitrate complaints or differences between members only in cases where:

(a) the matter has been referred to the Arbitration Committee by the Directors;
(b) all members who are parties to the arbitration have signed the form of "Consent to Arbitration" agreeing:

(i) to abide by the findings of the Arbitration Committee; and
(ii) not to have recourse to any other tribunal; and
(iii) to pay all costs of the arbitration proceedings in accordance with the award of the Arbitration Committee.

The Arbitration Committee shall consider and deal with the dispute as quickly as is reasonably possible.

The Arbitration Committee in its discretion may obtain and consider evidence from parties and witnesses by any or all of the following means:

(a) signed statements in writing which are not sworn;
(b) affidavits or statutory declarations;
(c) oral evidence which is not sworn;
(d) oral evidence on oath or affirmation.

Any party submitting evidence in writing should supply such number of copies as the Arbitration Committee may designate.

In any case where the Arbitration Committee decides to hear oral evidence, all members who are party to the arbitration shall be entitled to be present, give evidence, and to question any witness. In the case of a hearing in the Arbitration Committee, a member may be respresented, but only by another member in good standing.

Unless the parties consent to lesser notice, the Arbitration Committee shall give at least FIVE (5) days notice in writing by double-registered mail of the date, time and place of each sitting of the Committee to hear evidence. Provided written notice as aforesaid has been given to the parties to the arbitration, it shall be the duty of the participants to the arbitration to appear in person at the arbitration hearing at the time set for the said hearing. In the event that the complainant or the defendant, as the case may be, fails to appear at the time set for the hearing, or fails to notify the Secretary in advance of the hearing of a bona fide reason for his inability to attend, the Arbitration Committee may, in its discretion, rule against the said party by default.

The parties to the arbitration and their witnesses shall submit to examination on oath or affirmation in relation to the matters in dispute if the Arbitrators in their discretion so require subject to any valid legal objection, and shall produce before the Arbitrators all books, deeds, papers, accounts, writings and documents within their possession or power respectively, which may be required or called for, and do all other things in relation to the matters in dispute that the Arbitrators may require.

The Arbitration Committee is not bound to observe the legal rules of evidence but shall endeavor to resolve the dispute with fairness, justice and equity according to established standards of practice and ethics in the real estate business and the award of the Committee shall not be challenged for failure to conform to judicial formalities and strict rules of law.

The decision of the Arbitration Committee shall be in writing and be signed by the members of the Committee.

The Arbitration Committee shall forward its decision to the Secretary of the Board as soon as reasonably possible and in any event not more than SEVEN (7) days after the decision is made.

The Secretary of the Board shall forward forthwith to each member who is a party to the arbitration, a copy of the decision bearing the seal of the Board and the signature of the Secretary.

If the complainant is successful his TWENTY-FIVE DOLLARS ($25.00) shall be refunded to him and if unsuccessful, the Board may retain all or any part of the said sum of TWENTY-FIVE DOLLARS ($25.00) on account of costs which the complainant has been ordered to pay by the Arbitration Committee.

If the amount of the costs awarded by the Arbitration Committee exceed TWENTY-FIVE DOLLARS ($25.00) the balance due may be assessed against the complainant and collected as a debt due to the Board in the same manner as fees, dues or any other assessment.

The proceedings of the Arbitration Committee shall be recorded in a book kept for the purpose in which it shall be entered:

(a) a summary of each dispute;
(b) the decision of the Arbitration Committee.

The Arbitration Committee shall include in the record books the grounds for its decision.

In the event that anything arises during the course of the arbitration which is not provided for in these by-laws, then the provisions of the Arbitration Act, being Chapter III of the Revised Statutes of Alberta 1942, as amended shall apply insofar as they apply or can be made applicable, the necessary modifications being made.

If any member in good standing takes objection to the decision of the Arbitration Committee he must, within TEN (10) days from date of receiving the decision of the Arbitration Committee, which decision must be sent by double-registered mail, request that the Committee's file and written decision be reviewed by the Board of Directors and the Board of Directors on a majority vote of two-thirds (2/3) of those present may in their discretion refer the decision back to the Arbitration Committee for review.

COMPLAINTS

Each member of the Board shall report in writing to the Secretary any breach of these by-laws or the Code of Ethics or other business conduct of any member of the Board tending to discredit the Board or the real estate business.

The Secretary shall forthwith acknowledge receipt of the complaint by letter addressed to the complainant.

The Secretary of the Board shall notify the Directors of each complaint as soon as reasonably possible, and at the direction of the Directors notify the member concerning whom the complaint is filed by a notice in writing of the nature of the complaint.

The member concerning whom the complaint is filed shall forward to the Secretary of the Board an answer in writing in reply to the matter complained of or otherwise appear in person before the Board of Directors.

The Secretary of the Board shall notify the Directors at the first reasonable opportunity of any answer so received.

The Directors shall carefully consider all reports of complaints and the answers thereto, if any, and may:

(a) dispose of the matter in their discretion if further consideration or investigation does not appear to be warranted: or
(b) refer the matter to the Ethics Committee for an investigation and recommendations; or
(c) instruct the Secretary to refer the matter to the Arbitration Committee if the issue is a commission dispute between members or some similar issue which lends itself to arbitration.
(d) report any law infraction to the Commissioner of Real Estate.

DIVISIONS OF THE BOARD

The Directors in their discretion may create divisions of the Board corresponding to different branches of the real estate business in order to give members who specialize in such branches an opportunity for consideration and discussion of common problems.

FISCAL YEAR

The fiscal year of the Board shall correspond to the calendar year.

RULES OF ORDER

Roberts' Rules of Order shall be observed and followed for procedures governing meetings of the Board, the Directors and standing and special committees except where the same conflicts with these by-laws, in which case these by-laws shall prevail.

CODE OF ETHICS

All members shall conform to and observe the Code of Ethics and Standards of Business Conduct as set out in Schedule IV to these by-laws, which Code is deemed to be part of these by-laws.

AMENDMENTS

These by-laws shall not be rescinded, altered or added to except by extraordinary resolution of the Board.

The Secretary shall give at least TEN (10) clear days' notice by mail specifying the date, time and place of the general meeting at which the extraordinary resolution will be proposed and specifying the intention to propose the resolution as an extraordinary resolution.

An extraordinary resolution shall be passed by a majority of not less than three-fourths (3/4ths) of such members entitled to vote as are present at the meeting and vote thereat.

MEETINGS AND QUORUMS

The annual meeting of the Board shall be held in January in each year, the date, place and hour to be fixed by the Directors and notified to the members by the Secretary.

The accounts of the Board shall be audited annually in advance of each annual meeting by the firm of Chartered Accountants appointed at the immediately preceding annual meeting.

Monthly meetings of the Board shall be held in each month at a date, place and hour as the Directors may determine, but no monthly meetings need be held during the months of July and August.

Special meetings of the Board may be called by resolution of the Directors and shall be called by the President within FIFTEEN (15) days upon the written request:

(a) of two or more Directors; or
(b) of TEN (10) members of the Board.

196. The Secretary shall mail at least TEN (10) clear days' notice of each meeting of the Board to each member, addressed to the address of that member as shown by the books of the Board, except in the case of a special meeting or a meeting at which an extraordinary resolution is to be proposed in which case the Secretary shall give FIFTEEN (15) days' notice to each member.

197. The order of business at Board meetings when not altered by the President shall be as follows:

(a) reading and approving the Minutes of the preceding meeting;
(b) reports of standing committees;
(c) reports of special committees;
(d) Notices of Motion;
(e) unfinished business;
(f) general business and new business.

198. (1) The President or the Directors may determine the time and place for any meeting of the Board.

(2) A quorum for a meeting of the Board shall consist of TWENTY PERCENT (20%) of members having full voting privileges.

(3) In the case of a Directors meeting, SEVEN directors present shall constitute a quorum.

199. Voting on all matters, unless otherwise specifically provided shall be by a show of hands unless a vote by ballot is called for by TWO (2) or more members.

200. (1) Voting by proxy is not permitted at meetings of the Board or of the Directors of any committees.

(2) A voting Agent Member in good standing shall have one vote only at any general or annual meeting.

(3) This vote may be cast by the named Representative of the voting Agent member, or in his absence, by one other duly appointed Alternative who shall be a Member of the Board and an employee of the Voting Agent member.

(4) Notice of the appointment of an Alternative shall be in writing and filed with the Board at least TEN (10) days before the Alternative may exercise voting privileges.

(5) Notice of termination of Alternative Voting privileges shall be in writing and filed with the Board.

PRIVILEGES AND OBLIGATIONS

201. A Voting Agent member shall not employ a real estate salesman except for a trial period not exceeding TWO MONTHS, unless the salesman

(a) has had at least SIX months prior experience as a real estate salesman, or
(b) has attended all classes of the first available course of the Edmonton Real Estate Board Co-Operative Listing Bureau Limited, Educational Training and Guidance Course, or:

(c) obtains from the Directors an exemption in writing from the requirements of this section.

(d) No member shall employ as a salesman, any person who does not devote his or her full time and effort to the listing and sale of real estate as a Real Estate Salesman.

02. No member of the Board shall publish any Classified Advertising which does not comply with all of the following limitations, namely:

(a) HEADINGS - Limited to ONE line only. Maximum type size 14 pt.caps.

(b) SUB-HEADINGS - Limited to TWO lines only, with a maximum type size - 10 pt. caps.

(c) BODY OF AD

(i) Limited to SIX point caps with NO WHITE SPACE.

(ii) Indentation at side of ad - UNRESTRICTED.

(d) SIGNATURE

(i) FIRM NAME limited to TWO LINES only with a maximum type size - 14 pt. caps.

(ii) Office address, telephone numbers, salesmen's names etc., limited to a maximum type size of 6 pt. caps.

(e) ONE SIX POINT WHITE SPACE ONLY TO BE ALLOWED BETWEEN:

(i) Headings or Sub-Headings

(ii) Sub-Headings and Body of Ad.

(iii) Ad and Signature

(iv) Signature and Office address etc.

03. A member shall report to the Board office the employment and termination of employment of all salesmen on the forms prescribed from time to time by the Board of Directors.

04. The Directors in their discretion may terminate the membership of any person as a result of changes in control or ownership of the business of that member.

05. The members of the Board shall pledge themselves to aid in the enforcement of its by-laws including the Code of Ethics, standards of business practice, and the scale of commissions and fees and shall do all in their power to further the aims and objects of the Board.

06. Any member having been expelled for any cause shall be eligible for membership only in the manner prescribed for new members and after such waiting period as the Directors may fix in each particular case, or as herebefore provided.

7. The firm, partnership or corporation with which a member is associated in the real estate business shall be deemed to be subject to the by-laws of the Board.

8. Any violation of the by-laws of the Board by the firm, partnership or corporation or any of its members or employees shall be deemed to be violation on the part of the member or members representing such firm, partnership or corporation on the Board and the member or members shall be responsible for the actions of their firm, partnership or corporation unless he or they are able to show to the satisfaction of the Directors that the violation was without his or their knowledge or consent.

9. In the event of winding up or dissolution of the Board distribution of the assets of the Board shall be made to some Charitable Association designated at a special meeting called for that purpose.

COMMISSION SCHEDULE

10. Members of the Board shall use the Commission Schedule of the Alberta Real Estate Association as set ou in Schedule V as from time to time amended, which is deemed to be part of these by-laws.

11. Schedule of commission on Co-Operative sales shall be as set out in Schedule VI to these by-laws, which is deemed to be part of these by-laws.

MISCELLANEOUS

12. No part of the income of the Board shall be payable to or otherwise available for the personal benefit of any member of the Board.

13. The operations of the Board are to be chiefly carried on in Edmonton, Jasper Place, Beverly and the surrounding territory constituting the Greater Edmonton Area.

14. The Board shall be a member of the Canadian Association of Real Estate Boards and of the Alberta Real Estate Association. By virtue of such membership, all of its members shall also be members of these Associations.

EDMONTON REAL ESTATE BOARD CO-OPERATIVE LISTING BUREAU LIMITED

SUPPLEMENTAL BY-LAWS

I, GRACE FORBES, of the City of Edmonton, in the Province of Alberta, being Secretary of the Edmonton Real Estate Board Co-operative Listing Bureau Limited, hereby certify that the Supplemental By-Laws attached hereto are a true and exact copy of the revised Supplemental By-Laws passed at a general meeting of the Edmonton Real Estate Board Co-operative Listing Bureau Limited held at the City of Edmonton, in the Province of Alberta, on the 15th day of April, 1958, called for the purpose of authorizing the said revision of the Supplemental By-Laws.

DATED at the City of Edmonton, in the Province of Alberta, this 24th day of November, A.D., 1958.

Grace Forbes
Grace Forbes, Secretary,
Edmonton Real Estate Board Co-operative
Listing Bureau Limited.

CERTIFIED before me at the City of Edmonton, in the Province of Alberta, this 25th day of November, A.D., 1958.

T. W. Romank
A COMMISSIONER FOR OATHS in and for the Province of Alberta.

signed by me/us.

2. Sales:

(a) Commission shall be charged at the rate of 7% of the sale price up to $50,000.00. On sales exceeding a total sale price of $50,000.00, any amount over and above $50,000.00 shall be liable to commission at the rate of 5%.

(Split)

2½% to Listing Broker
4% to Selling Broker
½% to the Bureau

On that portion exceeding $50,000.00 and liable to 5%, the commission shall be divided as follows:

1¾% to Listing Broker
3% to Selling Broker
¼% to the Bureau

(non-Members)

(b) Members of the Bureau shall be allowed to work with any Licensed Real Estate Agent on the sale of properties Listed with the Bureau provided the transaction is handled by the Member Agent and that the commission payable to the Non-Member be not more than 2½%.

(c) In the event of a property listed with the Bureau being sold by a Non-Member Agent or by the Listing Owner direct during the currency of the listing, the Listing Broker, nevertheless, shall be responsible to the Bureau for it's share of commission, provided always that the Board of Directors may, at their discretion, waive such responsibility.

APPOINTMENTS:

(d) All appointments SHALL be made without undue delay by the Listing Broker, except where otherwise indicated.

(e) Cancellation of appointments - when a Sub-Broker is unable to keep an appointment, he shall advise the Listing Broker, if unable to contact him, he shall advise the Owner or Tenant immediately.

SUBMISSION OF OFFERS:

(f) Offers to Purchase shall be submitted through the Listing Broker in all cases where instructions so to do are clearly set forth in the copy of the listing when forwarded to the Bureau.

(g) When no specific instructions are contained in the listing, it shall be in order for a Selling Broker or his Salesman to submit an offer directly to an Owner, PROVIDED ALWAYS that the Listing Broker is informed IMMEDIATELY of offers presented and the terms thereof.

(h) A Broker shall without delay submit ALL written Offers to Purchase, supported by a deposit, to the Vendor. In the event that two or more IDENTICAL offers are received, the Broker concerned shall submit same to the Vendor in the order in which the offers are received.

(i) Under no circumstances may the terms of one offer, which is under consideration, be disclosed as a means of obtaining a better offer from someone else. The Broker concerned shall not disclose these terms to any one other than the Owner, including other Brokers, his own Salesman or their prospects. AN OFFER TO PURCHASE IS A CONFIDENTIAL DOCUMENT AND SHOULD BE SO TREATED.

Page 3 -- Continued:

(Deposits): (j) The full deposit shall be turned over to the Listing Broker with the Offer to Purchase unless otherwise mutually agreed upon between the Selling Broker and the Listing Broker. Deposits should be at least 10% of the sale price. All cheques should be certified as soon as possible.

(k) The documents shall be prepared at the direction of the Listing Broker unless otherwise mutually agreed between Listing and Selling Broker.

(Notice of Sale) (l) Notice of sale must be given by telephone by the Listing Broker to the Bureau at the earliest possible moment, followed in writing within 24 hours on the prescribed form (Sundays and holidays excepted).

(m) In all cases of an offer being received by a selling Broker he will, without delay, and not later than 48 hours after acceptance, submit to the Listing Broker an exact copy, typewritten, of the Interim Agreement, including all subject to "clauses and expiry date, etc."

7. Advertising: (a) The Listing Broker shall have the exclusive right to all advertising of the property. The Listing Broker may authorize other Members to advertise a property.

(Signs) (b) In respect to the placing of signs on properties listed with the Bureau, the Listing Broker only shall be permitted to place his "For Sale" sign on a property. That the listing broker only be permitted to place his "Sold Sign" on a property sold through the Edmonton Real Estate Board Co-operative Listing Bureau Limited.

SCHEDULE I

COVENANTS, UNDERTAKINGS AND WAIVER OF CLAIMS
By Applicant for Membership

To the Edmonton Real Estate Board Co-Operative Listing Bureau Limited:

1. I acknowledge that I have read and thoroughly understand the Objects, the By-laws, and the Code of Ethics of the Edmonton Real Estate Board Co-Operative Listing Bureau Limited and in particular the procedure for complaints, discipline and arbitration of disputes, and I thoroughly understand the same.

2. In consideration of the Edmonton Real Estate Board Co-Operative Listing Bureau Limited considering my application for membership or admitting me to membership in the Board I hereby irrevocably covenant, undertake and agree:

(a) to observe the By-laws, the Code of Ethics, and the Schedule of Commissions and Fees of the Board as they may be established or amended from time to time

(b) where there is a dispute between a member of the Board with another or other members of the Board, over commissions or other matters, these members should first try to settle their dispute favorably between one another. If they are not able to do so, then the member who is the complainant should refer the dispute to the Arbitration Committee for arbitration.

(c) to abide by the findings of the Arbitration Committee and not to have recourse to any other tribunal;

(d) to pay all costs of arbitration proceedings that I may be directed by the Arbitration Committee to pay;

(e) that the discipline procedure set out in the by-laws may be applied against me if I fail to observe any provision of the by-laws or the Code of Ethics;

(f) that the directors may suspend or expel me from membership or make a monetary assessment against me or otherwise discipline me in accordance with the by-laws if they find I have violated any provisions of the by-laws or the Code of Ethics;

(g) to pay each monetary assessment levied against me by the directors, and that the Board may recover the same as a debt due to the Board;

(h) that I hereby waive, release and forever discharge the Edmonton Real Estate Board Co-Operative Listing Bureau Limited, its directors, officers, members, servants and agents from all claims, suits, actions, causes of action and demands of whatsoever nature arising directly or indirectly in connection with my application for membership or my membership in the Board or any arbitration or discipline procedure that may be taken or purport to be taken pursuant to the by-laws of the Board that affect me or my business, or in connection with any other act done by or on behalf of or relating to the business of the Board.

IN WITNESS WHEREOF I have hereunto set my hand and seal this_____

day of _____, A.D. 19_____

_____
Signature of Applicant

_____
Witness

SCHEDULE II

ADDITIONAL COVENANTS BY
APPLICANT FOR
VOTING AGENT MEMBERSHIP

TO THE EDMONTON REAL ESTATE BOARD CO-OPERATIVE LISTING BUREAU LIMITED:

In consideration of the Edmonton Real Estate Board Co-Operative Listing Bureau Limited considering my application for membership or admitting me to Voting Agent Membership in the Board, I covenant and agree:

(a) that I . maintain and will continue to maintain all necessary records and the real estate trust account required by the Real Estate Agents' Licensing Act;

(b) that I will terminate the employment of any salesman I employ who declines to apply for membership in the Board, as set out in these by-laws, or whose application for membership is rejected, or who is suspended or expelled from membership by the Board.

(c) that I will maintain at all times an office that meets with the approval of the Commissioner of Real Estate;

(d) that the said office will be so situated that the Public will have direct access thereto at all times during ordinary business hours;

(e) that I will have at least one desk and telephone for my personal use and one desk for each salesman that I employ, together with at least one telephone or extension thereof for every two salesmen employed;

(f) that I will provide proper filing facilities for the filing and recording of the transactions of my firm;

(g) that I now have an office that meets with the above requirements located at _____;

(h) that I am not now a member, shareholder, director or officer and will not become a member, shareholder, director or officer of any other Multiple Listing Bureau in opposition to the Edmonton Real Estate Board Co-Operative Listing Bureau Limited during the term of my membership in this Board.

IN WITNESS THEREOF I have hereunto set my hand and seal the _____ day of

_____, A.D. 19____.

_____
SIGNATURE OF APPLICANT

_____
WITNESS

SCHEDULE III

EDMONTON REAL ESTATE BOARD CO-OPERATIVE LISTING BUREAU LIMITED

CONSENT TO ARBITRATION

The undersigned, being a member of the Edmonton Real Estate Board Co-Operative Listing Bureau Limited, hereby agrees that the matter in issue between the undersigned and _____ be referred by the Directors to the Arbitration Committee in accordance with the Constitution and By-Laws of the Edmonton Real Estate Board Co-Operative Listing Bureau Limited, and, pursuant thereto, the undersigned agrees:

(a) to abide by the findings of the Arbitration Committee;
(b) not to have recourse to any other tribunal;
(c) to pay all costs of the arbitration proceedings in accordance with the award of the Arbitration Committee.

IN WITNESS WHEREOF I have hereunto set my hand and seal the _____ day of _____, A.D. 19___.

_____
Signature

_____
Witness

SCHEDULE IV

CODE OF ETHICS
AS PER CANADIAN ASSOCIATION OF REAL ESTATE BOARD

PART I

PROFESSIONAL RELATIONS

ARTICLE 1. In the best interest of Society, of his associates, and of his own business, the Realtor should be loyal to the real estate board of his community and active in its work; and he should willingly share with his fellow-members the lessons of his experience.

ARTICLE 2. The Realtor should so conduct his business as to avoid controversies with his fellow-Realtors; but in the event of a controversy between Realtors who are members of the same real estate board, such controversy should be submitted for arbitration in accordance with the regulations of their board and not to a suit at law and the decision in such arbitrations should be accepted as final and binding.

ARTICLE 3. Controversies between Realtors who are not members of the same real estate board should be submitted for arbitration to an arbitration board consisting of one arbitrator chosen by each Realtor from a real estate board to which he belongs and of one other member, or a sufficient number of members to make an odd number, selected by the arbitrators thus chosen.

ARTICLE 4. When a Realtor is charged with unethical practice, he should voluntarily place all pertinent facts before the proper tribunal of the real estate board of which he is a member, for investigation and judgment.

ARTICLE 5. A Realtor should never publicly criticize a competitor; he should never express an opinion of a competitor's transaction unless requested to do so by one of the principals, and his opinion then should be rendered in accordance with strict professional courtesy and integrity.

ARTICLE 6. A Realtor should never seek information about a competitor's transaction to use for the purpose of closing the transaction himself or diverting the customer to another property.

ARTICLE 7. When a Realtor accepts a listing from another broker, the agency of the broker who offers the listing should be respected until it has expired and the property has come to the attention of the accepting Realtor from a different source, or until the owner, without solicitation, offers to list with the accepting Realtor; furthermore, such listing should not be passed on to a third broker without the consent of the listing broker.

ARTICLE 8. Negotiations concerning property which is listed with one Realtor exclusively should be carried on with the listing broker, not with the owner.

ARTICLE 9. The schedules of fees established by the various real estate boards are believed to represent fair compensation for services rendered in their communities and should be observed by every Realtor.

ARTICLE 10. A Realtor should not solicit the services of any employee in the organization of a fellow-Realtor without the knowledge of the employer.

ARTICLE 11. No sign should ever be placed on any property by a Realtor without the consent of the owner.

PART II

RELATIONS TO CLIENTS

ARTICLE 12. In justice to those who place their interests in his hands, the Realtor should endeavour always to be informed regarding the law, proposed legislation, and other essential facts and public policies which affect those interests.

ARTICLE 13. In accepting the agency for any property, the Realtor pledges himself to be fair to purchaser or tenant, as well as to the owner whom he represents and whose interests he should protect and promote as he would his own.

ARTICLE 14. A Realtor should not buy for himself property listed with him, nor should he acquire any interest therein, without first making his true position clearly known to the listing owner.

ARTICLE 15. When asked for an appraisal of real property or an opinion on a real estate problem, the Realtor should never give an unconsidered answer; his counsel constitutes a professional service which he should render in writing over his signature and only after having ascertained and weighed the facts, for which he should make a fair charge. The Realtor should not undertake to give an appraisal on any property in which he is in any way interested whatsoever, unless such interest is specially disclosed in the appraisal report, and under no circumstances should he undertake to give an appraisal or opinion when his employment is contingent upon the amount of his appraisal or the character of his opinion.

ARTICLE 16. The Realtor should encourage the naming of the actual or an obviously nominal consideration in a deed.

ARTICLE 17. When acting as agent in the management of property, a Realtor should not accept any commission, rebate, or profit on expenditures made for the owner, without his full knowledge and consent.

ARTICLE 18. The exclusive listing of property should be urged and practiced by a Realtor as a means of eliminating misunderstanding and dissentions and assuring better service to the owner.

ARTICLE 19. The acceptance by a Realtor of an exclusive listing imposes the obligation of rendering skilled and conscientious service; when a Realtor is unable to render such services either himself or with the aid of his fellow-Realtors, he should not accept the listing.

ARTICLE 20. Before offering a property listed with him by the owner, it is the Realtor's duty to advise the owner honestly and intelligently regarding its fair market value.

PART III

RELATION TO CUSTOMERS AND THE PUBLIC

ARTICLE 21. It is the duty of every Realtor to protect the public against fraud, misrepresentation or unethical practices in connection with real estate transactions.

ARTICLE 22. Property should be offered by a Realtor solely on its merits without exaggeration, concealment, or any form of deception or misleading representation.

ARTICLE 23. It is the duty of a Realtor to ascertain all pertinent facts concerning every property for which he accepts the agency, so that in offering the property he may avoid error, exaggeration and misrepresentation.

ARTICLE 24. A Realtor should never offer a property without the authorization of the o r.

ARTICLE 25. The price at which a Realtor offers a property should not be higher than that which the owner has openly agreed to take.

ARTICLE 26. Before a Realtor buys for a client property in the ownership of which the Realtor has an interest he should disclose his interest to all parties to the transaction.

ARTICLE 27. Before a Realtor sells property in the ownership of which he is interested, he should make it clear to the purchaser that he is acting solely for the owner.

ARTICLE 28. A Realtor when acting as a broker should make it clear for which party he is acting and he should not receive compensation from more than one party except with the full knowledge and consent of all parties to the transaction.

ARTICLE 29. Under no circumstances should a Realtor permit any property in his charge to be used for illegal or immoral purposes.

ARTICLE 30. In closing transactions, the Realtor should advise the use of legal counsel when the interest of any party to the transaction appears to require it; and in all cases he should exercise care in the preparation of documents so that they shall embody the exact agreements reached.

ARTICLE 31. At the time the agreement is reached as to the terms of a transaction the Realtor should fully inform each party regarding commissions and other expenses to which each is respectively liable.

ARTICLE 32. Before the closing of a transaction, the Realtor should recommend the examination of title and conveyancing papers.

ARTICLE 33. All contracts and agreements to which a Realtor is a party should be made writing and should be complete and exact.

ARTICLE 34. A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy whose presence will clearly be detrimental to property values in that neighborhood.

ARTICLE 35. No instructions nor inducements from any client or customer relieves the Realtor from his responsibility strictly to observe this Code of Ethics.

SCHEDULE NO. V

COMMISSION SCHEDULE of

THE ALBERTA REAL ESTATE

ASSOCIATION

1. IMPROVED URBAN RESIDENTAL PROPERTY:

On all sales not less than 5% of the total purchase price up to $100,000.00 and not less than 3% on balance of the purchase price, with a minimum commission of $100.00.

2. SUBURBAN OR URBAN IMPROVED SUBDIVISIONS:

The foregoing schedules do not apply to subdivisions, nor to property owned by a municipal corporation, nor to twenty-five or more lots or parcels in private ownership. In all cases where the above mentioned properties are listed on an exclusive basis the charge is to be a matter of contract and must meet with the approval of the local Real Estate Boards.

3. IMPROVED AND UNIMPROVED BUSINESS, FACTORY OR INDUSTRIAL PROPERTY

On all sales not less than 5% of the total purchase price up to $100,000.00 and not less than 3% on balance of the purchase price, witha minimum commission of $100.00.

4. UNIMPROVED URBAN PROPERTY:

5% with a minimum charge of $100.00.

5. IMPROVED AND UNIMPROVED ACREAGE, LOTS OUTSIDE URBAN LIMITS AND RESORT PROPERTY:

On all sales not less than 10%, minimum charge of $100.00.

6. FARM AND RANCH LANDS (Parcels containing 140 acres or more):

Where the price per acre is less than $250.00 and the total amount of the sale is less than $10,000.00 a commission of not less than 7% shall be charged. A commission of not less than 5% shall be charged on the balance from $10,000.00 to $100,000.00 and not less than 3% on the balance over $100,000.00. The minimum charge shall be $250.00. Farms in excess of $250.00 per acre shall be subject to the same commission schedule as set forth in paragraph 3.

7. ON THE SALE OF STOCKS OF MERCHANDISE, FIXTURES, EQUIPMENT, CHATTELS AND GOODWILL TOGETHER WITH OR WITHOUT THE LAND AND BUILDINGS THEREIN.

Where the total price is less than $20,000.00 a commission of 7% shall be charged. A commission of 5% shall be charged on the balance from $20,000.00 to $100,000.00 and 3% on the balance over $100,000.00 The minimum charge shall be $250.00.

8. EXCHANGES:

In cases of exchanges of property, the full commission on both of the two properties shall be charged, said commission to be paid by both parties in proportion to the value of the respective properties exchanged.

8. EXCHANGES: (Cont'd)

It should be clearly recognized that full commission can only be charged on both properties when both properties are actually listed under a signed listing, either general or exclusive. If there is no signed listing on one of the properties, then commission can only be collected on that property if the owner thereof voluntarily agrees to paying commission thereon.

9. LOANS:

On all private loans not less than 2% with a minimum of $25.00 plus conveyancing and inspection fee.

10. LEASES - NON RESIDENTIAL:

(a) Commercial Property (Stores, Business Space, Office Space, Warehouse Space):

On leases not less than 5% of the first 5 years rent, and not less than 2% of the gross amount of rent to be paid in subsequent years with not less than 2% of thegross amount of rent to be paid in subsequent years with not less than 2% of the gross amount to be paid on any renewal of any original lease, plus an additional charge for special services rendered.

All commissions (except in the case of ground leases) whall be figured upon the basis of the gross rent agreed upon by the Lessor and the Lessee and shall be due and payable at the time of the execution of the lease.

The total rent shall include the Real Estate Taxes to be paid by the lessee with the commission computation to be based on the current year's taxes multiplied by the number of years of the lease. The minimum charge for negotiation of any lease, except as otherwise stated in this section, shall be $25.00.

(b) Hay:

Not less than 10% of the consideration, with a minimum charge of $10.00.

(c) Farms:

Not less than 5% of each year's rental, with a minimum charge of $50.00.

(d) Ground:

Terms of 15 years or less on total rent covered by Lease, not less than 3%. Where property is subject to a re-appraisal during the life of lease, charge to be computed for full term on basis of the average annual rental for the first five years.

Ground leases exceeding 15 years, on the appraised rental value of property at dateof making lease, not less than 2%

If more than one appraisal is mentioned in the lease, then the percentage is to be figured on an average of the appraised value specified.

(c) Option for Renewal:

In every case where a tenant has privilege for renewal expressed in the lease, it is to be understood that the owner of the property shall pay commission for said renewal at the same rate as though the lease when first written, had covered the whole term. The commission is to be paid at the time of the renewal.

11. LEASES - RESIDENTIAL:

(a) Leases and Rentals of Residential Property (Where rental is not collected by agent):

For a monthly tenant where the rental is up to and including $50.00, minimum charge $15.00.

For a monthly tenant where the rental is over $50.00 but not more then $75.00, minimum charge $25.00.

For a monthly tenant where the rental is over $75.00, minimum charge $35.00¾

It is also provided that, where the property is leased, 5% of the gross amount of the Lease shall be charged, plus conveyancing fees.

(b) For Negotiating and Making Leases Where Rents are Collected by Agent:

For negotiating and making leases on residential property and for the renewal of old leases, in addition to the amount expended for advertising, the charges shall be in accord with the circumstances and services rendered, the minimum charge to be $15.00.

SPECIAL NOTE:

OPTION TO PURCHASE

Where the lease contains a provision granting the lessee an option to purchase the property demised, whether or not the purchase is made on the precise terms stated in the lease, the owner shall pay the agent who negotiated the lease the regular commission on the purchase price as set forth in Section 3 less any unearned leasing commission which may have been received.

(c) Collection of Rents - All Types of Property:

Not less than 5% on rents collected with a minimum charge of $1.00 per month, except business and apartment blocks with an annual rental exceeding $25,000.00 which may be specifically rated. Where property is turned over to an agent on which the rent is in arrears a charge of 10% shall be made on the amount of the arrears when the property is handed over.

In addition to the above charges, the fees for the supervision of repairs and on disbursements shall be fixed by each individual agent according to the services rendered.

12. COLLECTION ON AGREEMENTS AND MORTGAGES:

Not less than $1.00 per payment or more than 5% shall be charged.

13. COLLECTION OF GENERAL ACCOUNTS:

Not less than 5% on all amounts collected, provided, however, that in special cases of collections of principal on agreements or mortgages, where no book accounts are kept it shall be a matter for special arrangement in each case.

14. APPRAISALS:

(a) The fees for appraisals on RESIDENTIAL PROPERTY, suburban acreage and residential lots shall not be less than as follows:

On amounts up to $5,000.00.....$25.00
From $5,000.00 to $10,000.00..... 30.00
From $10,000.00 to $15,000.00..... 40.00
From $15,000.00 to $25,000.00..... 50.00

On amounts from $25,000.00 to $100,000.00 an additional $1.00 per thousand with a further charge of 50¢ per thousand on amounts over $100,000.00.

This does not prevent any member from making an extra charge for special work.

These rates are not obligatory in cases where valuations are made for Trust or Loan Companies for the purpose of Arranging a Mortgage Loan.

(b) The fees for appraisal of COMMERCIAL AND INDUSTRIAL PROPERTY of all types shall not be less than as follows:

On amounts up to $5,000.00.....$35.00
From $5,000.00 to $10,000.00..... 50.00
From $10,000.00 to $15,000.00..... 70.00
From $15,000.00 to $25,000.00..... 85.00

On amounts over $25,000.00 an additional $1.00 per $1,000.00.

An additional charge should be made for detailed written reports and additional charges for special work, mileage expenses, etc.

In connection with large commercial properties, the charge is to be based on the amount of time and effort required to make the appraisal.

The above mentioned rates are suggested minimums and are designed to be used only as a guide with the charge to be based more closely on the actual work and time involved in making an appraisal.

15. SALE OF AGREEMENTS FOR SALE AND PURCHASE OF MORTGAGES:

A rate of not less than 5% commission shall be charged on any amounts from $500.00 upwards, and the minimum charge on any sale shall be $25.00.

16. EXPERT TESTIMONY AND OPINIONS:

Charges for expert testimony and for opinions shall be made according to the extent of services rendered, but shall in no case be less than$50.00 for each day or part thereof, but this shall not apply to Assessment Appeals, the charge for which shall be made subject to special arrangements. This charge is to be made whether spent in Court, private hearing, investigations or research.

In case expert testimony or an opinion involves a valuation, appraisal fees as in the appraisal section should be charged, in addition.

17. OPTIONS TO BUY PROPERTY WHERE SECURED BY A BROKER:

(a) If a consideration, cash or otherwise, has been paid for an option arranged by a broker for a vendor, and the option is not exercised, the broker shall charge the principal granting the option not less than one-half of the consideration received, but in no event shall this amount exceed the sale commission to which the broker would have been entitled had the option been exercised.

(b) If a broker is engaged by a prospective purchaser to secure options, an agreement shall be made with the purchaser that in the event of the option not being exercised the broker shall be reimbursed for his services on the basis of not less than 1% of the total sale price involved in the option. In all cases where the option is exercised the commission as set forth in paragraph three shall apply. This does not prevent anyone from making a charge for special services rendered.

SCHEDULE VI

CO-OP. RULES AND REGULATIONS

1. Listings: The Listing Broker must:

(a) Secure a Co-Operative Listing Contract, in triplicate, on the authorized form, signed by the Owner and Spouse, for a minimum period of 45 days. The Bureau shall not accept a listing unless same has been signed by the Registered Owner or Owners or Owner or Owners under Agreement for Sale.

(Notice) (b) Within TWENTY-FOUR (24) hours (Sundays and holidays excepted) of the Listing Broker's receipt of such signed listing, one copy of each listing must be received by the Bureau office. Such listing must give all data available and as full and accurate a description of the property as possible with any additional information on the property to be forwarded as soon as procurable. The date and hour signed to be shown on the listing.

(c) The Listing Broker must give immediate notice by telephone, confirmed in writing within TWENTY-FOUR (24) hours, of any change in price, terms, conditions, or application for cancellation of any listing, on the prescribed forms.

(d) When a Member Salesman take a co-op listing he is duty bound to inform the Listing Owner that should there be a general listing in force on his property that the Co-Op Listing takes precedence over the general listing or listings and that the Firms holding general listings should be advised accordingly by the Vendor.

(e) The Bureau will, forthwith, upon receipt of a Co-Operative Listing write a letter of appreciation on the Bureau's letterhead, to the person or persons listing their property for sale, which letter will include a list of the names of the Members of the Bureau.

(Listing Fee) (f) The Listing Broker shall pay $2.00 for each listing when filed with the Bureau.

(Renewals) (g) If a listing is renewed by the original Listing Broker and the Listing Broker notifies the Bureau two days before the listing expires, the listing may be extended for any length of time without charge (otherwise a charge of $2.00 will be made.)

(h) If re-listed with the Bureau by another Bureau Member it shall be considered a new listing with the minimum term of 45 days with the regular charge of $2.00 to apply.

(Cancellation) (i) No Co-Operative listing can be cancelled before expiry date unless cancellation is recommended by the Listing Broker and approved by a majority vote of the Board of Directors present at any Board meeting.

(j) Before a cancellation application will be considered by the Board of Directors, the prescribed Application Form must be signed by the Owner or Owners of the property on which the request for cancellation has been made, which form requires that "The said property will not be sold for a period of NINETY (90) days from the signing hereof, and if it is sold, or an offer for sale is accepted by me/us during the said period, I/we agree to pay you the full sales commission as provided in the listing

Exhibit (3)

GOVERNMENT OF THE PROVINCE OF ALBERTA

THE CO-OPERATIVE ASSOCIATIONS ACT, 1955

ALBERTA REGULATION 132-57

(O.C. 2242-46)
(O.C. 1352-47)
(O.C. 109-49)
(O.C. 199-59)
(O.C. 991-61)

STANDARD BY-LAWS

GOVERNING ALL ASSOCIATIONS INCORPORATED UNDER THE CO-OPERATIVE ASSOCIATIONS ACT (CHAPTER 59 OF THE STATUTES OF ALBERTA, 1955)

(with amendments up to and including 1961)

1. *Meetings.*

(*a*) The first General Meeting of the Association shall be held on such day, being not more than two months after the incorporation of the Association, and at such hour and place as the Provisional Directors may determine.

(*b*) The annual meeting shall be held annually within sixty days of the end of the fiscal year of the Association, at such hour and place as may be determined by the Board of Directors.

(*c*) A Special General Meeting of the Association may be called at any time by the Directors, whenever they deem the same necessary or advisable. It shall be necessary for the Directors to call a special general meeting whenever requested so to do in writing by twenty-five per cent or more of the members. Any such written request shall state clearly the nature of the business to be transacted at such meeting. If upon request, the Directors do not within fourteen days proceed to call a special meeting of the Association, the members making the request or any other members of the required number, may themselves call the said meeting.

(*d*) At least ten days' notice of every general or special meeting shall be given, by mailing a notice to each member of the Association, at the address last registered in the office of the Association. The notice must state the hour, day, and place of meeting.

(*e*) (i) At the annual or any general or special meeting, one-tenth of the registered members of the Association, or their fully authorized district delegates, be considered a quorum. (O.C. 199-59).

(ii) In the case of associations with a membership of five hundred or more, fifty or more members, exclusive of minors, shall constitute a quorum, provided that before the commencement of any such annual, general, or special meeting, those members in attendance give their consent by a majority vote. (O.C. 199-59).

(*f*) If within one hour from the time appointed for any meeting of the Association, a quorum is not present, the meeting, if convened upon the request of members, shall be dissolved. in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned sine die.

2. *Elections.*

(*a*) At all meetings of the Association each member in good standing shall have one vote, and a majority vote of the members present shall decide all questions. No proxies shall be allowed.

(*b*) Any member in good standing shall be eligible to be elected a Director of the Association, unless the Supplemental By-laws require that certain business requirements be met as provided in Section 22, Sub-section (5), of The Co-operative Associations Act.

(*c*) No person holding office in the Association shall be eligible to be elected as Auditor of the Association.

(*d*) Candidates for the position of Director shall be nominated openly and at a general meeting, and shall be elected by ballot.

3. *Officers.*

(*a*) The Board of Directors shall consist of not less than five members.

(*b*) At the first General Meeting of the Association, if there are five Directors, two shall be elected to hold office until the first annual meeting, two shall be elected to hold office until the second annual meeting, and one shall be elected to hold office until the third annual meeting.

(*c*) If there are seven Directors, they shall be elected in the same manner as in clause (*b*) except that three will be elected to hold office until the first annual meeting, two until the second annual meeting, and two until the third annual meeting.

(*d*) If there are nine Directors, they shall be elected as in clause (*b*) except that three shall be elected to hold office until the first annual meeting, three until the second annual meeting, and three until the third annual meeting.

(*e*) At all elections of Directors, except at the first election, and the filling of a vacancy on the Board, the term of office shall be three years. In filling a vacancy on the Board, the election shall be for the unexpired term of office of the former Director.

(*f*) At any election of Directors, retiring Directors shall be eligible for re-election to the Board of Directors.

(*g*) The Board of Directors shall meet immediately after the first general meeting of the Association and subsequently immediately after each annual meeting, and at such meetings shall appoint from their own number a Chairman and shall also appoint a Secretary-Treasurer who may or may not be a Director.

4. *Board of Directors.*

(*a*) The Board of Directors shall direct and supervise the business of the Association, and may exercise all such powers of the Association as are not required to be exercised by the Association in general meeting.

(*b*) The Board of Directors may appoint an Executive Committee from among their number, and shall, if appointed, define their duties.

(*c*) The Directors may by resolution, appoint such managers or other officers as they may deem necessary for the conduct of the affairs and business of the Association defining their duties and fixing their remuneration.

(*d*) In case any vacancy occurs in the Board, the remaining Directors may appoint a member of the Association as a Director who shall hold office until the next general meeting of the members of the Association.

(*e*) The Board of Directors shall hold regular meetings at such times and places as they may from time to time determine.

(*f*) The Chairman of the Board shall call a special meeting of the Board upon the written request of a majority of the Directors, and the Secretary shall mail to each Director at least five days prior to such meeting a notice of the time, place and the purpose of the meeting, but if all the Directors are present at a

meeting it shall be deemed to have been regularly called whether or not the prescribed notice of the meeting has been given.

(*g*) The Chairman may vote upon any question, but having done so, he shall not have a casting vote in the event of a tie. In the event of there being no majority in favor of a motion the motion shall be declared lost.

(*h*) In case a Director fails to attend three consecutive meetings of the Board of which he has been duly notified, his office shall be declared vacant, unless his absence has been explained to the satisfaction of the Board, and upon his office being declared vacant another member shall be appointed by the Board to take his place.

(*i*) At a meeting of Directors held prior to the annual meeting the Directors shall adopt a report covering all the activities of the Association for the preceding twelve months, and such report shall be presented to the members at the annual meeting.

(*j*) If any Director is, to the satisfaction of the Board, proved to be guilty of disloyalty without adequate cause, the Board may by resolution declare his office vacant and proceed to fill the vacancy by appointing another member of the Association to take his place.

(*k*) At any regular or special meeting of the Board a majority of the Directors shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time until a quorum is obtained.

5. *Duties of Chairman.*

(*a*) It shall be the duty of the Chairman of the Board of Directors to preside at all meetings of the Association and of the Board of Directors. He shall be ex-officio a member of all Committees appointed, and shall submit to the Annual Meeting of the Association the Directors' Report of the affairs of the Association. He shall together with the Secretary-Treasurer, sign, execute and deliver all deeds or conveyances of real estate, which the Directors may order executed, and also sign all certificates of allotment of stock of the Association, which have been passed upon by the Directors. If no other person is authorized to do so by resolution of the Board of Directors, or if the person so authorized is for any reason unable to do so he shall, together with the Secretary-Treasurer, authenticate by his signature the seal of the Association, and shall countersign all cheques, notes, bills of exchange, and other financial documents signed by the Secretary-Treasurer on behalf of the Association.

(*b*) In case of the absence of a Chairman or his inability to act for any cause, the Vice-Chairman shall discharge all the duties of Chairman, or if no Vice-Chairman has been elected, then the Board of Directors shall nominate one of their number to discharge the duties of Chairman.

6. *Duties of Secretary-Treasurer.*

(*a*) The offices of Secretary and Treasurer may be held by one person to be known as the Secretary-Treasurer.

(*b*) It shall be the duty of the Secretary-Treasurer to attend all meetings of the Association and the Board of Directors and to keep correct minutes of the same. He shall have charge of the correspondence, records, and books of the Association.

(*c*) The Secretary-Treasurer shall receive and deposit in whatever chartered bank, Treasury branch, or place of safe keeping, the Directors may designate, all moneys paid to the Association and shall issue receipts therefor. He shall be responsible for the keeping of a proper set of books, showing accurately the dealings of the Association, and shall present a full and detailed account of the receipts and disbursements to the Board whenever requested by them, and shall prepare for submission to the annual meeting of the Association a complete statement of its financial position.

(*d*) The duties of the Secretary-Treasurer may be modified or altered in keeping with the allotment of such duties as may be assigned to the manager or other officers of the Association by the Board of Directors.

7. *Seal of Association.*

(*a*) The Association shall have a seal to be approved by the Board of Directors.

(*b*) The seal of the Association shall not be affixed to any instrument except by authority of a resolution of the Board of Directors. The President and Secretary-Treasurer or such other persons as the Directors may appoint for the purpose, shall sign every instrument to which the seal of the Association is so affixed in their presence.

8. *Audit.*

(*a*) At the first general meeting of the Association and subsequently at each annual meeting, an Auditor shall be appointed by the members. The name of the Auditor appointed shall be submitted to the Supervisor for his approval. In the event of the Supervisor not approving the nominee for any reason, and in the further event of the Association failing to nominate another who is approved by the Supervisor, then the Supervisor may appoint an Auditor who shall thereupon be the Association's Auditor for the ensuing year.

(*b*) At the close of each fiscal year and prior to the holding of the annual meeting of the Association, the books of the Association shall be closed and the Auditor shall have access to all the books and accounts of the Association, and shall examine the General Statement of Receipts and Expenditures, Funds and Effects of the Association and verify the same with the accounts and vouchers relating thereto, and shall either certify the same as found by him to be correct, duly vouched and in accordance with the law, or specially report to the Association and to the Supervisor in what respect he found any entry or account to be incorrect, unvouched for or not in accordance with the law.

(*c*) The report of the Auditor shall be presented at the annual meeting of the Association, and one duly certified copy shall be forwarded to the Supervisor of Co-operative Activities, as well as any special form of return which may be required under the Act.

(*d*) The fiscal year of all Associations incorporated under the Co-operative Associations Act of 1955 shall close on the 31st day of December in each year.

9. *Withdrawal of Members.*

(*a*) Any member wishing to withdraw from the Association shall apply to the Board of Directors and shall offer to sell his shares to the Association and the Board shall decide whether or not the Association shall buy the said shares or any of them in accordance with the provisions of Section 35 of the Co-operative Associations Act.

(*b*) If the Board does not deem it advisable to buy the said shares it may consent to their sale or transfer to some other person to be approved by the Board.

(*c*) Any member withdrawing from the Association shall be entitled to obtain the par or paid-up value of his share or shares, exclusive of any right to any portion of the reserve fund, provided that in the event of the share capital of the Association being impaired any member withdrawing shall be entitled only to such a price for his share or shares as to the Board of Directors may appear to be fair and reasonable.

10. *By-laws.*

(*a*) All by-laws of the Association, with the exception of the Standard By-laws, may be repealed, altered or amended by other by-laws passed at any general meeting of the Association especially called for that purpose, or at any annual meeting providing at least ten days' notice of such intention to repeal, alter or amend the said by-laws has been given, provided that no new by-law or amended by-law shall have any force or effect until a copy thereof proved by affidavit of the Chairman or Secretary of the Board of Directors to be a true copy of the by-law or

by-laws passed by the Association as hereinbefore provided has been approved by the Supervisor of Co-operative Activities, and filed with the Registrar of Companies.

11. *Disposition of Surplus Earnings.*

(*a*) Surplus earnings remaining in the hands of the Association at the end of any fiscal year shall be dealt with as follows:

1. By setting aside necessary reserves.

2. By paying, if any, at a rate not to exceed five per cent (5%) per annum such interest or dividends as the Directors may determine, on any paid-up capital stock or other capital used in the business of the Association on which there is no obligation to pay interest.

3. By allocating, crediting, or paying to members of the Association the balance, or such proportion thereof as may be determined, computed at a rate in relation to the quantity, quality or value of the goods or products acquired, marketed or handled, dealt in or sold, and services rendered by the Association from or on behalf of or to the members, whether as principal or agent or otherwise, with appropriate differences in the rate for different classes or grades and quality thereof.

12. *Order of Business.*

(*a*) The order of business for general meetings of the Association may be as follows:

1. The meeting called to order by the Chairman or Acting Chairman.
2. The reading and disposal of the Minutes of the preceding meeting.
3. Business arising out of the minutes.
4. Reports of Officers and Board of Directors.
5. Reports of standing committees appointed at a previous meeting.
6. Reports of special committees appointed at a previous meeting.
7. Reports of Auditor.
8. Unfinished business.
9. Nomination and election of officers.
10. Nomination of Auditor.
11. New business.
12. Adjournment.

13. *Bonding.*

Every person appointed to an office touching the receipt, management, or expenditure of money, or with the receipt of goods, wares, or merchandise for the purposes of an Association under The Co-operative Associations Act, 1955, shall, before entering upon the duties of his office, give such security as is deemed sufficient by the Directors, which security may be varied in amount or renewed from time to time. (O.C. 1352-47).

14. *Borrowing of Dividends.*

In consideration of the Association promising to repay to each member without interest, and as soon as moneys become available for that purpose in the revolving fund heretofore established by it, such sums as the Association may borrow hereunder from year to year, each member of the Association agrees to lend to the Association this year, and in each year hereafter upon said terms, a sum equal to the amount of the patronage dividends credited to him by the Association, or such part thereof as the Association may desire to borrow and the Association is by virtue hereof authorized to apply the said dividends of each member on the said loans during such time as he remains a member of the Association.

(O.C. 1352-47).

15. *Share Capital.*

For the purpose of insuring the financial stability of the Association and increasing the mutual benefits to be derived by the members by the collective use of a portion of the savings arising from the operation of the Association each member hereby applies for the largest number of shares of the capital stock of the Association for which payment can be made from 100 per cent of the amount of the patronage dividend available to the member arising out of the business of the Association for the fiscal year 1947, and for each fiscal year thereafter, provided that if in any year the said percentage of patronage dividends allocated to a member is not an even multiple of the par value of one share, then the member hereby applies for a further share. In consideration of the Directors of the Association alloting shares in accordance with this by-law, each member hereby authorizes the Association to apply on account of the purchase price of the said share or shares the said percentage of patronage dividends; provided that allotment by the Directors of the Association shall be made forthwith after the amount available for shares pursuant to this by-law is ascertained and notice of such allotment shall be given by the Association to each member within 12 months after the end of each fiscal year, showing the amount of patronage dividends credited on account of shares in accordance with the provisions of this by-law. (O.C. 109-49).

16. *Insurance Premiums.*

For the purpose of acquiring for each member the greatest possible financial security through life insurance by the collective use of a portion of the savings arising from the operation of the Association, each member agrees to pay to the said Association from his dividends arising out of the business of the Association for the fiscal year 1947 and for each fiscal year thereafter, such sum as the Association may in any said year or years apply on account of such member in payment of insurance premiums for life insurance carried on the life of such member under any member group life insurance plan adopted by the Association. (O.C. 109-49).

17. Board of Directors.

The Board of Directors shall have the right to dismiss any member and repurchase his share of stock or return his membership fee, for actions in their opinion harmful to the association, for failing to patronize the business of the association to a minimal amount, or for failure to meet calls on shares as required. Before such dismissal can take effect the Board shall invite the member concerned to attend a Board meeting, at which time the reasons for dismissal will be discussed, and the member allowed to present his objections, if any, to such dismissal.

The member so dismissed may appeal to the next general meeting or annual meeting of the association, and its majority opinion shall be final.

Dated at the City of Edmonton, in the Province of Alberta, this Second day of January, 1962.

H. W. WEBBER,
Supervisor of Co-operative Activities.

Countersigned for Identification:
(*Sgd.*)

A. R. PATRICK,
Minister of Industry and Development.

EDMONTON: Printed by L. S. Wall, Queen's Printer.

Exhibit (4)

Telephone PBX 422-7141

H. R. KELLOUGH REALTY LTD.

Real Estate and Insurance Counsellors

June 8, 1965

MAIN OFFICE
Ground Floor
McLeod Building
10009 . 101A Avenue
EDMONTON

Mr. Kelly Haugen,
Executive Secretary,
Edmonton Real Estate Board,
10515 Princess Elizabeth Avenue,
EDMONTON, Alberta.

Dear Kelly:

Re: Robert J. Philipzyk

At the outset, I should explain that we kept this man on our staff due only to the fact that his wife was extremely ill and the firm carries a very comprehensive policy on its staff members through Aetna Life. The branch managers were unable to get along with him. They were extremely critical of his attitude to the public and his attitude around the office, but by switching him to different branches I was able, in a measure, to keep peace in the family. You will understand my reason for the efforts on his behalf when I explain that he drew $2,564.52 from Aetna although the University Hospital tells me there is an item of $820.00 still unpaid. In a couple of cases, we insisted that Mr. Philipzyk endorse the cheques and we mailed them on to their proper source.

His employment began with Trotter, McIntyre and Kellough on October 28th, 1960 and he owes that firm $165.00. He transferred to Kellough Realty on January 10th, 1961 and I am enclosing an exact copy of his ledger sheets which will show you the money that he drew out as against the money he earned. This leaves him owing the company $1,368.97. There is one commission that still might come in which you will find on the back sheet amounting to $142.50 but all told, I advanced him $165.00 in the old company for which company he earned nothing and $1,368.97 in Kellough Realty, and by having him covered by Aetna he received an additional $2,564.52, and all this apart from being paid in full for everything he earned.

I have heard rumors that this man is running around telling people that I owe him money. I haven't much time to listen to rumors so I paid no attention. The other day he met two of my employees, who I value highly, and explained to them that the only way he could get the money that I owed him would be to sue me. If he has the gall to tell this type of lie to two of my employees, I shudder to think what he's capable of.

If this does not constitute a breach of ethics of the rankest type after what I have done for this man, I would see little or no point in us attempting to adhere to any type of a code of ethics. In any event, I want it stopped. The figures I gave you can be substantiated and I will produce my branch managers and those sales personnel who are involved and I will gladly open my books to the Board's auditors. There is a good deal more that could be said but I will not make any further comment at this time except that I would appreciate knowing what action, if any, that you are going to take because if it does not come within your jurisdiction then I will attack the situation through the Commissioner of Real Estate using every legal resource that the law affords me to put a stop to this business once and for all.

Very truly yours,

H. R. KELLOUGH REALTY LTD.

(Signed H.R. Kellough)

H. R. Kellough
PRESIDENT & MANAGING DIRECTOR

HRK:as
encl.

Exhibit (5)

It was sometime in August of this year that we happened to meet Mr. Bob Phillips on 114th Ave and 101 Street and we started a casual conversation about real estate. I didn't know Bob Phillips very well at that time, but Magda Hansen had worked with him in the Northeast office of Kellough Realty. Mr. Phillips stated he was very glad that he had severed relations with Kellough Realty, and said he could not understand how we could work for a man like Mr. Kellough. He then went on to say how he was treated with regards to his license insurance money and commissions, and stated that Mr. Kellough owed him a substantial sum of money but he would not pay him, he said Mr. Kellough tried to blackmail him. He also stated that he should have taken this matter to the Real Estate Board and lay a charge against him because a man like Mr. Kellough should not be in the Real Estate business and hold a agent license. Some more remarks were made against Mr. Kellough but can't recall all of it.

Joe Olthuis

Magda Hansen

EXHIBIT (6)

FEB 16 1966

R. J. Philipzyk,
C/o Burton Real Estate
8631 - 109 Street,
Edmonton, Alta.

Feb. 15th 1966.

Mr. H. W. Webber,
Supervisor, Co-operative Activities,
Department of Industry & Development,
Government of Alberta,
Legislative Building,
Edmonton, Alberta.

Sir:

Re: Hearing by Ethics Committee of Edmonton Real Estate Board on a Complaint by Mr. H. R. Kellough against R. J. Philipzyk

I attach hereto several documents related to the above hearing held on December 17th, 1965, including a communication from the Executive Secretary dated December 21th, 1965, advising me that I have been severely reprimanded, ordered to pay $100 fine and to write a letter of apology to Mr. H. R. Kellough on the complaint of making derogatory remarks about Mr. H. R. Kellough.

Our Board can only act by authority of its Constitution and By-Laws approved by your Department in 1959 and I can find no authority for the Board to constitute itself as a court to hear a case of slander.

Ethics is normally understood to deal with relationships between brokers or with vendors or purchasers in the sale of property. Nothing of this nature is involved in this matter. The thing that is involved here is that as a former salesman for H. R. Kellough Realty, Mr. Kellough has attempted to ensure that I will not be employed by any other member firm. I have been employed with Burton Real Estate since July 1965. In November 1965 he was the cause of the cancellation of my bond with one company which forced me insure with another company, and this matter is known to the Commissioner of Real Estate. He took this action although he was my insurance agent collecting the commission on my surety bond policy.

I would like to draw your attention to the Board letter of February 11th regarding the appeal to be held March 2nd, 1966; and especially to the procedure to be followed which will allow me to be condemned for twenty minutes after I have been allowed to present my case. All the directors and the members of the Ethics Committee will again vote against me just to uphold a decision already made, and even though Mr. Kellough referred to me as a "bastard" at the Ethics Committee hearing.

If the decision is upheld and I do not pay the penalty the next step will be the loss of my employment with Burton Real Estate and as I do not wish this to happen I appeal to you to study the attached papers and advise me of my rights.

Sincerely yours,

R. J. Philipzyk

Robert J. Philipzyk (Building)

EXHIBIT (7)

FORM 99

Government of the Province of Alberta

DEPARTMENT OF INDUSTRY AND DEVELOPMENT

Co-operative Activities and Credit Union Branch

REFER TO FILE

239 HIGHWAYS BUILDING.
106th STREET AND 97th AVENUE
TELEPHONE 229-3581
Edmonton, Alberta.

February 24, 1966.

Mr. R. J. Philipzyk,
c/o Burton Real Estate,
8631 - 109 Street,
Edmonton, Alberta.

Dear Sir:

We are in receipt of your letter of February 18 and note that there is a dispute between yourself and Mr. H. R. Kellough as to the question of derogatory remarks alleged to have been made. I cannot see how the Supplemental By-laws of the Edmonton Real Estate Board Co-operative Listing Bureau Limited can be used to settle a dispute of this type.

It would appear to me that if there is any grounds for this type of action that this should be taken through a civil court on the basis of slander rather than to use by-laws which were approved for a commercial enterprise for this purpose.

Yours truly,

H. W. Webber,
Supervisor.

HWW/ep
c.c. Real Estate Board
c.c. Ken J. Walker, Dep.
Commissioner of Real Estate.

Exhibit (8)

Co-operative Activities &
Credit Union Branch,
239 Highways Building
106th Street & 97th Avenue,
Edmonton, Alberta

March 9, 1966.

Mr. R. J. Philipzyk,
c/o Burton Real Estate,
8631 - 109 Street,
Edmonton, Alberta.

Dear Sir:

Further to my letter of February 24, we have been advised of further information in this situation about which you wrote on February 18 and since there are usually two sides to the question we felt that it was only fair to listen to the other side of the story and also feel that it is necessary to write to you in this regard. From the information given to us it appears that the problem which has arisen goes much deeper than the question of derogatory remarks and that indeed there was a question of business ethics involved, therefore, the business ethics question would appear to be one which could rightly heard before the committee and the decision as to whether or not the reprimand which was given would appear to be in the powers and duties of the Real Estate Board.

Yours truly,

H. W. Webber,
Supervisor.

HWW/ep
c.c. Real Estate Board
c.c. Ken J. Walker, Dep.
Commissioner of Real Estate

Exhibit (9)

68-150-2

George B. McClellan
Ombudsman
Province of Alberta

Mr. J. E. Hart, Q. C.
Deputy Attorney General

August 21, 1968

Deputy Provincial Secretary
Attn: Mr. J. A. MacPhee
Commissioner of Real Estate

Adminstrator of the Human Rights Branch
Attn: Mr. H. C. French

The enclosed preliminary brief is forwarded to you for your information in view of the references to you or your Department in Paragraph 15 I, II, and III. Subsequent briefs will be forwarded to you as prepared and I should be very grateful for any comment you may care to make available to me at any time.

Geo. B. McClellan

George B. McClellan
Ombudsman

GBM:es

To: Mr. Richard Martland
Deputy Minister
Department of Industry & Tourism
1828 Centennial Building
Edmonton, Alberta

Our file no. 68-150-2
Date: August 21, 1968

From: George B. McClellan
Ombudsman, Province of Alberta
920 Centennial Building
Edmonton, Alberta

1. Further to my discussions with you and Mr. Webber concerning the complaint of Mr. R. J. Philipzyk, a former Real Estate salesman, I would like to summarize the inquiries which I have carried out by this office since that time.

2. Mr. Philipzyk's complaint was originally declined in October of 1967 in the second month of the operation of the Ombudsman's office. The complaint which was one of the early ones received, did not indicate that the Edmonton Real Estate Board Co-operative Listing Bureau Limited operated under any Government sanction.

3. I raised this point with Mr. Philipzyk as to whether the Edmonton Real Estate Board Co-op had any connection with the Provincial Government--he was unable to advise me that it had. It should be remembered that this action was taken within the first twenty days of the opening of the Ombudsman's office and many of the functions of Government which are well known now, were not entirely familiar at that time.

4. However, I did endeavor to ascertain if the Edmonton Real Estate Board Co-op was listed as being responsible to the Provincial Government and I could not find any such information. I should mention here that I will use the expression, Edmonton Real Estate Board Co-op, or the EREBC to signify the long name of the Edmonton Real Estate Board Co-operative Listing Bureau Limited throughout this correspondence.

..... 2

5. I did however, refer Mr. Philipzyk's complaint to the Human Rights Branch to ascertain if any jurisdiction lay there and ascertained that it did not. Mr. Philipzyk, now a resident of British Columbia, was then advised that I did not see that I had jurisdiction.

6. Subsequently, I received a communication from Mr. J. P. Walsh, Manager of Burton Real Estate, Edmonton, who is Mr. Philipzyk's former employer. It was from Mr. Walsh that I ascertained that the Edmonton Real Estate Board Co-op operated under a set of By-laws and Supplemental By-laws approved by the Supervisor of the Co-operative Activities Branch of your Department. It was further ascertained that the EREBC is registered as a Co-operative with your Department.

7. I immediately advised the complainant that I had satisfied myself that I had jurisdiction and I would make an investigation.

8. I discussed the matter with Mr. Weber and yourself on March 11th and you kindly provided me with your Departmental files dealing with the Edmonton Real Estate Board Co-op. Mr.Webber was kind enough to supply me with two copies of the Supplemental By-laws of the Edmonton Real Estate Board Co-op and a copy of the Act.

9. You will remember that I was concerned with the seeming violation of natural justice by the alleged manner in which the Executive of this so-called Co-operative had used the powers granted to it by the Supplemental By-laws to expel Mr. Philipzyk from the organization, and to oblige his employer to dismiss him,thereby depriving him of his livelihood. It was further alleged that the point of dispute which came before the Board had to do with certain personal remarks which Mr. Philipzyk was allegedly said to have made concerning another former employer, a Mr. H. R. Kellough, then a member of the Executive of the Edmonton Real Estate Board Co-op. The complainant, and his view is substantiated by other interested persons, feels that Mr. Kellough,if he felt aggrieved should have taken legal action for slander, and that the remarks were not such as to come within the authority of the Executive of the Edmonton Real Estate Board Co-op to sit in judgement on.

10. My investigation indicated that there was sufficient cause to put before you a very strong case,that the actions of the Executive Board,and the procedures by which they got rid of Mr. Philipzyk,were such as to infringe on the most basic civil rights

10. Cont'd ...

of the individual. It was also apparent that the By-laws were being used to subjugate the salesmen members, who were forced to join the organization; who had no real vote or voice in its policies; who were obliged to sign a Release on their application for entry into the organization that they would never undertake to appeal any decisions of the Executive to the Courts; who subjected themselves to whatever decision the whim of the Executive decreed, and who could, as happened to Mr. Philipzyk, be expelled from membership of the Board. The final touch was the manner by which the Board obliged the employer to dismiss the expelled salesman, and thus, his employer was required to return his license to sell, to the office of the Supervisor of Real Estate. This requirement usurps the power of the Government to decide who shall or who shall not be licensed to sell Real Estate in the Edmonton area.

11. The investigations carried out by this office including the study of your files and the files of the Supervisor on Real Estate, as well as information supplied by Realtors, has raised in my mind a number of questions which suggest the strong possibility that the Supplemental By-laws, which are at the root of the complaint not only transgress natural justice, but give rise to additional matters which should be given serious consideration.

12. I propose to make a separate submission on each of the questions referred to, and I will therefore for the moment, only list them as follows:

I. The Supplemental By-laws have been used by the Executive of the Edmonton Real Estate Board Co-op to:

a. obligate all salesmen employed by Real Estate firms, who are themselves members of the EREBC to join the Board.

b. establish block voting by the salesmen, i.e. one vote per 50 members, and other voting restrictions for salesmen members so that the salesman could never outvote the minority of their employers. This procedure was deliberate as will be indicated later, and referred to by a member of the Executive at a meeting with Government officials as a "courtesy vote".

12. I. Cont'd ...

c. require salesmen obligated to apply for membership to sign away any rights to appeal decisions of the Board to the Courts or through other channels. Additionally, salesmen must agree to accept decisions of the Board to pay fines if levied, to pay costs, and to abide by decisions of the Board, eventhough such decisions may expel them from membership; and require the employer to dismiss them and return their licences to the Supervisor of Real Estate. The disciplinary procedures of other associations such as those provided for in the Legal Professions Act, the Medical Professions Act, and the Agrologists Act, all provide for eventual appeal to Courts of Law by a member who feels himself aggrieved by disciplinary decisions of the governing body of his Association.

d. establish a course of conduct, which is worded so carefully vague as to raise an immediate suspicion of its intent. I refer to article 34, part III of schedule IV of the Supplemental By-laws which reads:

"A Realtor should never be instrumental in introducing into a neighborhood character of property or occupancy whose presence will clearly be detrimental to property values in that neighborhood."

In these times of developing enlightenment, it is suggested that no clause in any By-law approved by Government should be so worded that it may be interpreted as having a discriminatory connotation.

e. carry out procedures during any investigations or hearings before Tribunals having disciplinary powers which allegedly depart from the most elementary rights of an accused before any Court or Tribunal but furthermore contravene the provisions of the Administrative Procedures Act. Admittedly, the Administrative Procedures Act was passed since these By-laws came into effect, and the Administrative Procedures Act does not apply to your Department. Nonetheless, the Act is an expression of the wishes of the Legislature of the Province of Alberta and should have been a "guide-line" against which these procedures should have been measured subsequently.

12. II. Notwithstanding the fact that the By-laws were registered under the Companies Act, the question is raised that the Supplemental By-laws should also have been registered with the Registrar of Regulations. The Regulations Act, being Chapter 78, Statutes of Alberta 1957, states in Section 3 that every Regulation, or a certified copy thereof, shall be filed in duplicate with the Registrar. The Interpretation Section of that Act defines "Regulation", as "any regulation, rule, order or by-law, of a legislative nature made or approved under the authority of an Act of the Legislature, including ... but does not include any regulation, rule, order, by-law or resolution made by a local authority or, except as hereinbefore otherwise provided, by a corporation incorporated under the laws of the Province". The suggestion that these By-laws should have been so registered will be amplified in my later submission.

III. The question raised itself as to whether the EREBC was in fact a genuine Co-operative within the meaning of any generally accepted definition of a Co-operative. The Act is silent on the question of definition (The Co-operative Assistance Act) and further it would appear that the generally accepted definition of a Co-operative would apply. The Supplemental By-laws under which the EREBC operate, appear to contravene the fundamentals of the Co-operative system on a number of points as follows:

a. Voting: The fundamental rule of one-member, one-vote is basic in a Co-operative. In this instance there are six classes of membership of which only two have voting rights and so far as salesmen are concerned, there is only one vote for every 50 of these. I shall enlarge on this point later. This mathematical safeguard rigged to insure ultimate control by the agent members, provides furthermore, that salesmen do not have the right to vote for the election of officers, amendments to the Constitution and By-laws, or matters of finance of the Association.

b. Compulsory Aspects: If his employer is an agent member then an employee must join the Association. If he does not do so, or worse, his application is rejected, he will lose his position and his license.

12. III. Cont'd ...

b. The agent member himself is obligated to discharge his employee if not acceptable to the Association, or himself face expulsion.

c. Levy of fines: It is difficult to reconcile the power to levy fines with the spirit of the Co-operative. I have been unable to find other examples where a Co-op has such powers. Neither can I find any such authority spelled out in the Act or indeed in the standard By-laws, although the authority is clearly spelled out in the Supplemental By-laws.

d. The discriminatory provision referred to under item I (d) has no part in any concept of the Co-operative that I can find.

e. It is difficult to visualize a Co-operative in which the employees of the members are compelled as a condition of employment to join and pay fees, and, at the same time, to sign away their fundamental civil rights to equity before the law.

13. The preparation of the questions raised in Paragraph 12(I) is now underway and will be forwarded to you as quickly as it is completed. The questions in Paragraph 12 (II) and 12 (III) will follow.

14. I am sending you this preliminary outline as you will undoubtedly in the meantime wish to consider the propositions which I will be putting forward. I also forward a second copy for Mr. Webber.

15. Copies of this and subsequent reports will be distributed as follows:

I. The Deputy Attorney General, inasmuch as by his memorandum of November 1, 1967, his file 2 R 17, headed Re: The Edmonton Real Estate Board - Co-operative Listing Bureau Limited, he expresses the opinion that the proper way to resolve Mr. Philipzyk's complaints would be by way of action in the Civil Courts.

II. The Deputy Provincial Secretary, for the attention of Mr. J. A. MacPhee, in his capacity as Commissioner of Real Estate, and inasmuch as he was present at a meeting between representatives of the Edmonton Real Estate Board

15. II. Cont'd ...
Co-op and Government officials, when the voting procedure for salesmen was outlined. Furthermore, because Mr. MacPhee in his official capacity, by memorandum of March 9, 1959, addressed to the Supervisor of Co-operative Activities, forecast unpleasant consequences if these By-laws were approved and in my view, forecast them extremely accurately.

III. Administrator of the Human Rights Branch, inasmuch as the apparent discriminatory article 34 of schedule 34 of the Supplemental By-laws referred to in Paragraph 12, I.(d) above may well fall within the jurisdiction of the Human Rights Branch.

Yours very truly,

Geo. B. McClellan

George B. McClellan
Ombudsman

GBM:es
Encl.

Exhibit(10)

February 3, 1969.

Our File: 68-150-2

920 Centennial Bldg.

Honourable A. R. Patrick,
Minister of Industry & Tourism,
207 Legislative Building,
EDMONTON, Alberta.

Dear Mr. Patrick:

Re: Complaint of R.J. Philipzyk

I have, during the past year, been investigating the complaint of one R. J. Philipzyk, a former Real Estate Salesman of Edmonton. Mr. Philipzyk's original complaint was against the Edmonton Real Estate Board, a private business organization, which was beyond my jurisdiction, under the terms of The Ombudsman Act.

2. I at first declined to proceed with the investigation, but eventually established that the action which resulted in Mr. Philipzyk's loss of his job, had in fact, been taken by the Edmonton Real Estate Board Co-Operative Listing Bureau, under the sanction of a set of by-laws approved by the Supervisor of the Co-operative Activities Branch of your Department. Mr. Philipzyk, having exhausted all further avenues of appeal, brought his complaint to me, in which he was supported by at least two other agent-members of the Co-op.

3. I had some discussion with the Deputy Minister, Mr. Martland, and Mr. Webber, in the early stages of my investigation, and obtained complete co-operation, access to files, and whatever other assistance I required from the officers of your Department.

4. I subsequently forwarded a report to Mr. Martland; Mr. J. B. Hart, Q.C., Deputy Attorney General; Mr. J.A. MacPhee, Commissioner of Real Estate; and Mr. H. C. French, Administrator of the Human Rights Branch, all of whom I believed to have some concern with the matters under investigation.

5. I attach for your information, a copy of that preliminary report, dated August 21, 1968. In that report, I drew up an agenda of the matters which I would be reporting on more fully, at a later date.

6. I subsequently forwarded a report to the same gentlemen dated November 13, 1968, under the same heading, in which I outlined completely the results of my enquiries, and the opinions at which I had arrived. Copy of that report is attached hereto for your information. With that report was also forwarded a number of exhibits, from A-1 to A-25. A copy of each is attached for your information.

7. Following the submission of these reports, a meeting was held in the Attorney General's Department with Mr. W. McLean, a Solicitor for the Department of the Attorney General, Mr. J. L. Patterson; Mr. H. W. Webber; Mr. A. B. Weir, Solicitor to the Ombudsman; and myself. We met later on the same date with Mr. Hart, the Deputy Attorney General.

8. My opinions, which are fully delineated in the attached reports, were discussed at length, and it is my view that there was general agreement that the Edmonton Real Estate Board Co-Operative Listing Bureau Limited, was not a true co-operative, at least since these supplemental by-laws came into force, if indeed it ever was. It is my submission, that if this view is correct, then everything done by this organization against this complainant, is null and void, and of no effect.

9. I think there was general agreement that the manner in which the complaints against Mr. Philipzyk were heard and dealt with, as well as the general atmosphere in which the appeal was heard, was contrary to natural justice.

10. I also feel that there was no dissent that any supplemental by-law, which obligated a man to sign away the usual avenues of appeal to the Courts or other tribunals, could be anything but wrong.

11. There were other issues which came out of the investigation, and which did not deal directly with Mr. Philipzyk.

There is the one which I referred to the Administrator of Human Rights, concerning which he has written to the Deputy Minister, criticizing that specific Article in the By-law.

12. In view of the opinions at which I have arrived, supported by the fullest discussion with various Government officials, I would confirm my original opinion that, by the terms of Section 20 of The Ombudsman Act, the action which was taken against Mr. Philipzyk was unreasonable, unjust, improperly discriminatory; further, that it was based wholly or partly on a mistake of law or fact; and finally it was wrong. It is also my opinion, that such action could never have taken place, had it not been for the supplemental by-laws, approved by the Supervisor of Co-Operative Activities, acting as an Agent for the Government of the Province of Alberta.

13. If my view is acceptable, then it follows, I respectfully submit, that there is an obligation on the part of Government to take whatever steps are necessary, to rectify this injustice. I am not, of course, suggesting that anyone can be obligated to provide Mr. Philipzyk with employment in his former position. I do, however, recommend that Government take whatever steps are necessary, to repeal all of these supplemental by-laws, or to change registration of this organization, to some other form than a co-operative, so that any Real Estate firm in the Province of Alberta, may be free to offer employment to Mr. Philipzyk. Furthermore, Mr. Philipzyk, and all properly licensed Real Estate Salesmen, should no longer be prevented, by any By-law or Regulation, which does not have the force of Legislation, from having access to those Multiple Lists, to which his employer is entitled access.

14. Mr. Philipzyk has been unemployed since either the date of his hearing in December 1965, or the rejection of his appeal in May 1966, depending on which was the effective date. I would recommend that steps be taken to compute his average earnings over the period of two years previous to his dismissal, and that an "ex gratia" payment be made for the period during which he has been unemployed, based on that average.

15. I should be very pleased to discuss this case with you at your convenience.

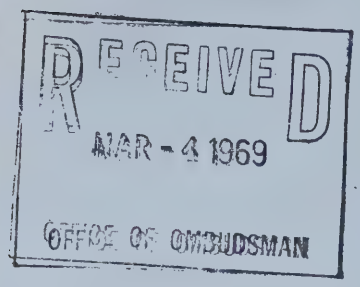
Sincerely yours,

Encls.
GBM:H

Geo. B. McClellan,
Ombudsman.

Copy to: Mr. R. Martland,
Deputy Minister,
Dept. of Industry and Tourism.
Centennial Building.

Exhibit (11)



207 Legislative Building,
Edmonton 6, Alberta,
March 3, 1969.

Mr. G. B. McClellan,
Ombudsman, Province of Alberta,
920 Centennial Building,
Edmonton, Alberta.

Dear Mr. McClellan:

I am sorry that the attached material hadn't been received at the time of our meeting.

After you have had a chance to examine it I shall take the opportunity of calling you to follow up on our last meeting.

Yours sincerely,

A. R. Patrick

A. RUSSELL PATRICK,
Minister of Industry and Tourism

Att: 2

ITEM 187

PROVINCE OF ALBERTA

MEMORANDUM DEPARTMENT OF ATTORNEY GENERAL

OUR FILE NO.: 27.P.25

YOUR FILE NO.:

FROM: W. F. McLean,
Solicitor.

DATE: February 26, 1969.

TO: Mr. J. E. Hart, Q.C.,
Deputy Attorney General.

Re: Mr. R. J. Philipzyk vs. The Edmonton Real Estate Board Co-operative Listing Bureau Ltd.

Pursuant to our recent telephone conversation the writer is herein setting down his views as to why he does not think that any "ex gratia" payment should be made by the Government to Mr. Philipzyk, either as suggested by the Ombudsman or at all.

A. Mr. Philipzyk voluntarily became a member of the above Association thereby binding himself to its constitution. Section 5 of The Co-operative Associations Act R.S.A. 1955 C. 59 provides as follows:

> " When registered the memorandum of association and by-laws bind the association and the members thereof to the same extent as if the memorandum and by-laws respectively had been signed and sealed by each member and contained covenants binding each member, his heirs, executors and administrators, to observe subject to this Act all the provisions of the memorandum and of the by-laws. "

After approval by the Supervisor of Co-operative Activities, the memorandum and supplemental by-laws of the above Co-operative Association were duly registered with the Registrar of Joint Stock Companies. Thus, when Mr. Philipzyk became a member of the association, its memorandum and supplemental by-laws became binding upon him.

It is quite true that the nature of the supplemental by-laws of the above association in one respect is such as to make them inconsistent with those of a true co-operative association. In a true co-operative association each member has one vote whereas in the above association fifty salesmen have the voting power of one agent. Be that as it may, it must be assumed that Mr. Philipzyk knowingly accepted this inequality upon becoming a member in order that he could benefit from the listing advantages enjoyed by members of the association.

B. Any damages suffered by Mr. Philipzyk arose through the unauthorized and illegal proceedings at his hearing and at his appeal, and not as a result of the said supplemental by-laws.

In his letter of November 18th, 1968 to the Supervisor of Co-operative Activities the Ombudsman states that an injustice has been worked against Mr. Philipzyk by the above association under the authority of its supplemental by-laws.

With the greatest of respect, I fail to see how the association can be said to have acted under the authority of its supplemental by-laws on the facts of the present case. The supplemental by-laws provide for a hearing to the Ethics Committee and also provide that the member complained against shall be entitled to be present and to question any witness. Mr. Philipzyk was ejected from the hearing thereby being deprived of the right given to him by the supplemental by-laws to cross-examine witnesses. It is therefore submitted that Mr. Philipzyk suffered as a result of the unauthorized proceedings of the Ethics Committee and not as a result of the provisions of the supplemental by-laws. Similarly, he suffered as a result of the illegal and improper procedures followed by the members on his appeal and not as a result of the said supplemental by-laws.

C. In allowing registration of the above Association the Supervisor of Co-operative Activities exercised his discretion in a reasonable manner.

In his letter of November 18th, 1968 to the said Supervisor great importance is placed by the Ombudsman on the fact that the Supervisor approved of the said supplemental by-laws. The Ombudsman in this said letter specifically criticizes the Supervisor for

giving such approval.

What has been overlooked by the Ombudsman is the fact that the legislature has given an absolute discretion to the Supervisor in all matters respecting the contents of the memorandum and supplemental by-laws of Co-operative Associations. This is clear when one reads the provisions of The Co-operative Associations Act with special emphasis on section 4, sub-section (6).

Although the Act does not require that the Supervisor exercise his discretion in a reasonable manner, it is submitted that he did so when he approved of the memorandum and supplemental by-laws of the above association. Groups of real estate agents and salesmen had incorporated as Co-operative Associations in some of the other provinces before the above or any similar Co-operative Association was incorporated in Alberta. These earlier incorporated Co-operative Associations in the said other provinces provided in their by-laws for disciplinary proceedings against their members. Thus, the Supervisor had precedents to look to.

D. The provisions of the Supplemental By-Laws respecting hearings and appeals are not uncommon to Associations of a similar nature to the above association.

In his letter of November 13th, 1968 to the Deputy Minister of Industry & Tourism, the Ombudsman observes as follows in dealing with the Supplemental By-Laws commencing at section 134 under the heading "Ethics Committee".

> " It is interesting to note that the Ethics Committee during such hearing may accept signed statements which are not sworn, or Affidavits, or Statutory Declarations, or oral evidence which is not sworn, and oral evidence on Oath or Affirmation. "

Such provisions are not uncommon in public and private Acts dealing with professional and other groups. In General Medical Counsel v. Sparkman (1943) A.C. 627 at p.p. 641-2 Lord Wright makes the following observations respecting such provisions.

" I quote first the language of Lord Loreburn L.C. in Board of Education v. Rice (1911 A.C. 179 at p. 182) ... "In such cases the Board of Education will have to ascertain the law and also ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. ... The board is in the nature of the arbitral tribunal, and a court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact - but if the court is satisfied either that the board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari." Lord Loreburn had just expressly observed that the board "can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". The words "fair" and "relevant" are to be noted. If this statement is applicable to an administrative tribunal, it must, in my opinion be applicable to the proceedings of the council which may not inaptly be described as a professional tribunal like so many other similar professional bodies which are invested by statute for grave reasons of public policy with disciplinary powers over members of the profession. "

It is quite true that the procedure of the Ethics Committee of the above association is covered by its supplemental by-laws and not by any statute. Nevertheless, in so far as the members of the said association are concerned, the situation is exactly the same since they, by virtue of section 5 of The Co-operative Associations Act, are bound by the provisions of the supplemental by-laws.

E. Mr. Philipzyk has failed to avail himself of the remedy of certiorari. It is apparent from the above quotation from the Judgment of Lord Wright in General Medical Counsel v. Spackman that a tribunal such as the Ethics Committee of the above association must act in good faith and fairly listen to both sides. It is doubtful that the committee acted in good faith. Most certainly it did not fairly listen to both sides. By ejecting Mr. Philipzyk from the hearing the committee prevented him from presenting evidence on his own behalf and from exercising the right of cross examination given to him by the supplemental by-laws.

Immediately after the decision of the said Committee, Mr. Philipzyk could have commenced certiorari proceedings and, on the facts as we know them, there is no doubt that the Court would have quashed the proceedings on the ground that they were contrary to natural justice. Although the supplemental by-laws provide for an appeal to a general meeting of the members of the above association, there was no obligation on Mr. Philipzyk to follow this procedure. The law is set out in Judicial Review of Administrative Action - S.A. de Smith 2nd Edition at p. 436 as follows:

> " The existence of a right of appeal to the courts from a tribunal's decision does not deprive the courts of power to award prohibition to restrain the tribunal from acting outside its jurisdiction. Nor is the applicant obliged to have exhausted prescribed administrative means of redress before having recourse to the courts.
>
> An applicant for certiorari is not necessarily obliged to have exhausted his rights of appeal within the administrative hierarchy. "

The learned author then, on the same page, sets out the principles which ought to regulate the exercise of judicial discretion when alternative remedies are available. These are as follows:

" (i) The court must be prepared to take into account all the circumstances of the case, including the purpose for which certiorari has been sought, the adequacy of the alternative remedy and the conduct of the applicant.

(ii) If an applicant claims to be aggrieved by a decision made without jurisdiction or in breach of the rules of natural justice, the fact that he has not taken advantage of a statutory right of appeal should normally be regarded as irrelevant ...

(vi) The court ought not to refuse certiorari because of alternative other than appeal unless it is clearly satisfied that those other remedies are more appropriate. "

Mr. Philipzyk again had the right to take certiorari proceedings after the general meeting of the members of the above association purported to deal with his appeal. Again there were grave breaches of the rules of natural justice in that the appeal was heard in his absence and new evidence was introduced against him on the appeal.

Much has been made by the Ombudsman of the fact that on the hearing of such appeals the voting power of the agent members of the said association far outweighs the voting power of the salesman members. Be that as it may, this fact is of no relevance to Mr. Philipzyk's situation where the appeal body acted in excess of its jurisdiction.

F. A remedy is still available to Mr. Philipzyk in the Supreme Court of Alberta.

Rule 742 of The Alberta Rules of Court provides:

" A notice of motion for an order in the nature of certiorari shall be filed and served within six months after the judgment order, warrant or inquiry to which it relates .... "

It is therefore too late for Mr. Philipzyk to take such proceedings. However, other proceedings are open to him. In Judicial Review of Administrative Action (supra) the learned author states at p.p. 507-8:

> " The courts have jurisdiction to make declarations that the decisions of non-statutory domestic tribunals and of statutory tribunals are void ... The leading cases in which declarations of invalidity have been awarded have all been concerned with the wrongful imposition of disciplinary sanctions; but there is no reason to suppose that the ambit of the action for a declaration is restricted to this type of question. "

In Alberta declaratory judgments or orders can be given by the Court with or without consequential relief. This power stems from section 34 (p) of The Judicature Act which provides as follows:

> "34
> (p) no action or proceeding is open to objection on the ground that a judgment or order sought is declaratory only, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed. "

It is submitted that Mr. Philipzyk can take proceedings in The Supreme Court of Alberta against the said Association for a declaration that the decision of the Committee and the decision of the body of members hearing his appeal are both void. As consequential relief he can claim damages against the Association.

In a previous discussion with the Ombudsman he advised you and the writer that this man can not afford a lawyer. At that time you indicated to the Ombudsman that the Department of the Attorney General would be prepared to assist Mr. Philipzyk in obtaining a competent lawyer at no cost to him. Such assistance would of course be provided on purely compassionate grounds since this man is not entitled as of right to any assistance from the Government.

WFM:ew

W. F. McLean,
Solicitor.

R. Philipzyk
Hon. A. Russell

RECEIVED ITEM 187
FEB 28 1969
of The
INDUSTRY
& TOURISM

PROVINCE OF ALBERTA

MEMORANDUM DEPARTMENT OF THE ATTORNEY GENERAL

OUR FILE NO.: 27.P.25

FROM: J.E. Hart, Esq., Q.C.,
Deputy Attorney General.

YOUR FILE NO.:

TO: The Honourable A. Russell Patrick,
Minister of Industry & Tourism,
Legislative Building.

DATE: February 28, 1969.

Re: Mr. R.J. Philipzyk vs.
The Edmonton Real Estate Board
& The Edmonton Real Estate Board
Co-operative Listing Bureau Ltd.

With reference to your memorandum of February 17, I agree with you entirely that the Ombudsman's recommendation of an "ex gratia" payment in this case is both unwarranted and might well be said to be within an area not covered by his jurisdiction. I am attaching a copy of Mr. McLean's opinion with which I agree entirely, and I would strongly recommend that Mr. Philipzyk be advised, as he has been on other occasions, that if he has any remedy in this case, it is in the Courts. As Mr. McLean points out, we could arrange to get him a Needy Litigants Certificate, and under the special circumstances the committee need not inquire as to Mr. Philipzyk's financial ability to carry the action.

We had one other case in which we disagreed with the Ombudsman, and he indicated that he would carry the full report of the case in his annual report, and would print a rebuttal of any indication of wrongdoing or negligence on the part of the Attorney General's Department. This case, as you will remember, involved a mental patient at Ponoka. The award made by the government in that case would appear to have been purely on the basis of compassionate grounds as there appeared to be no legal or moral

..../2

obligation to pay that individual any more than a disability pension as would be paid to any Alberta citizen who found himself in a similar physical condition.

John E. Hart
Deputy Attorney General.

JEH/wm
Encl.

Exhibit (12)

March 4, 1969.

68-150-2

The Honourable A. Russell Patrick,
Minister of Industry & Tourism,
207 Legislative Building,
EDMONTON 6, Alberta.

Dear Mr. Patrick:

Re: Complaint of R. J. Philipzyk

1. Thank you very much for your letter of March 3rd, and the two documents which you forwarded with it, being photocopies of a memo dated February 26 from Mr. W. F. McLean, Solicitor of the Attorney General's Department to Mr. John B. Hart, Q.C.; and a memo from Mr. Hart to you dated February 28th.

2. I have noted your comment that you would be calling me to follow-up on our last meeting, and I shall be readily available at your convenience.

3. I am, of course, as yet unaware of your reaction to the opinions which you have received from the Deputy Attorney General, but they do not appear to coincide at all with the trend of our recent discussion.

4. I note the first part of Mr. Hart's memo to you, in which he questions my jurisdiction insofar as a recommendation for the "ex gratia" payment is concerned. I am not sure whether he intends to challenge my jurisdiction insofar as the investigation itself is concerned as well. In either, or both cases, I would be prepared to reiterate my opinions and recommendations as far as this becomes necessary.

5. There are one or two points which I would just refer to here, and which can be amplified later, if necessary.

6. On Page 3 of Mr. McLean's Opinion, he says as follows:

> " What has been overlooked by the Ombudsman is the fact that the Legislature has given an absolute discretion to the Supervisor in all matters respecting the contents of the memorandum and supplemental by-laws of Co-Operative Associations. This is clear when one reads the provisions of The Co-Operative Associations Act with special emphasis on section 45, sub-section (6). "

7. The first sentence of the next paragraph reads as follows:

> "Although the Act does not require that the Supervisor exercise his discretion in a reasonable manner, it is submitted that he did so when he approved of the memorandum and supplemental by-laws of the above association."

8. I had not overlooked the points referred to by Mr. McLean. In fact, if Mr. McLean is putting forward the proposition "that the Legislature has given an absolute discretion to the Supervisor in all matters respecting the contents of the memorandum and supplemental by-laws of Co-Operative Associations," while at the same time providing no requirement for the Supervisor to exercise his discretion in a reasonable manner, I wonder, if in the interests of the whole Co-Operative movement in this Province, the Legislature might not wish to reconsider the Statute in the light of this Opinion.

9. I hasten to add that I am not stepping outside my jurisdiction in raising this point, as Section 20(3)(e) clearly provides that I may make such recommendations, if I am of the opinion "that any law on which the decision, recommendation, act or omission was based, should be reconsidered."

10. Mr. McLean suggests that Mr. Philipzyk voluntarily became a member of the above association. I suggest that his voluntary entry was about as voluntary as Mr. McLean's entry into The Law Society of Alberta. He could not

fully practice his profession or business unless he was a member.

11. Mr. McLean states that when Mr. Philipzyk became a member of the Association, its memorandum and supplemental by-laws became binding upon him. Mr. McLean emphasizes, as mentioned above, the Legislature has given an absolute discretion to the Supervisor in all matters respecting the contents of the memorandum and supplemental by-laws of Co-Operative Associations.

12. Under that "absolute discretion" the Supervisor approved Schedule I to the supplemental by-laws. Clause (h) of that Schedule requires an applicant to "waive, release and forever discharge the Edmonton Real Estate Board Co-Operative Listing Bureau Limited, its directors, officers, members, servants and agents from all claims, suits, actions, causes of action and demands of whatsoever nature arising directly or indirectly in connection with my application for membership or my membership in the Board or any arbitration or discipline procedure that may be taken or purport to be taken pursuant to the by-laws of the Board .... "

13. If Mr. McLean holds that the Supervisor had an "absolute discretion" to approve that part of the Schedule which I have just quoted, and which must be signed by the applicant, then I find it difficult to understand how the Department of the Attorney General can recommend that Mr. Philipzyk take legal action against the R.R.E.B. Co-Operative Listing Bureau Limited. I fail to see how Mr. McLean can have it both ways.

14. Furthermore, in my opinion, if the Supervisor has an absolute discretion which cannot be reviewed, or challenged or called into question, then my jurisdiction is complete, according to Section 11(3)(c) of The Ombudsman Act.

15. However, it does not seem to me that we need be concerned at this time over the powers which may have been granted to the Supervisor of Co-Operative Activities. Whatever powers he may have, apply only to a Co-Operative.

Mr. McLean, Mr. Hart, and Mr. Martland, have all stated to me and my Solicitor at several meetings, that since the approval of the Supplemental by-laws, the E.R.E.B. Co-Op was not a Co-Operative. Mr. McLean added that he doubted if it ever was. Since my report and conclusions were forwarded to the Department, Mr. Webber has written to the E.R.E.B. Co-Operative Listing Bureau Limited, instructing extensive changes to the Supplemental by-laws.

16. A meeting was held in my office, at the request of the Secretary of the Edmonton Real Estate Board Co-Operative, Mr. Kelly Haugen. Present at this meeting on February 4, 1969, were Mr. Johns of the Calgary Real Estate Board, and also a member of the National Executive; Mr. Kelly Haugen of the Edmonton Real Estate Board Co-Op; Mr. Martland; Mr. Webber; Mr. Weir, the Solicitor to the Ombudsman's Office; and myself. Mr. Martland advised the Real Estate representatives that they had a year to phase out of their Co-Operative status.

17. It is now accepted that this organization is not, and was not, a Co-Operative. Overt steps have been taken by your Department to liquidate this so-called Co-Operative. I find it difficult to understand Mr. McLean's reasoning. It seems to me, that he and his Deputy, having already confirmed my submission that this organization was not a Co-Operative, cannot now reverse themselves and say that the Supervisor has "absolute discretion," which apparently cannot be challenged. If this is not a Co-Operative, as is generally agreed, what then was Mr. Webber supervising?

18. I am very interested in Mr. McLean's opinion that Mr. Philipzyk can take proceedings in the Supreme Court of Alberta. Mr. Hart confirms this view in his memorandum to you, and states that Mr. Philipzyk has been told this on several occasions. Mr. McLean points out that arrangements could be made to get Mr. Philipzyk a Needy Litigant's Certificate, and the Department is apparently prepared to waive the usual rules as to financial ability to pay on purely compassionate grounds.

19. What has apparently been overlooked by Mr. McLean, is the result of the previous advice given to Mr. Philipzyk by the Attorney General's Department. I attach hereto

a photocopy of a letter dated June 28, 1967, from the Deputy Secretary of The Law Society of Alberta, to Mr. Philipzyk, following a complaint by Mr. Philipzyk to that Society concerning one of his Solicitors.

20. You will note that the Law Society sought the assistance of the Needy Litigants' Committee in Edmonton on behalf of Mr. Philipzyk. Mr. S. H. McCuaig, Q.C., who is referred to by the Deputy Secretary as a very prominent Edmonton Barrister, was assigned to listen to the case. Mr. Kelly, the Deputy Secretary, reported in this letter to Mr. Philipzyk as follows:

> " Mr. McCuaig after investigating the matter reached the conclusion that he was unable to see any ground on which you could succeed against the Real Estate Board. "

21. Mr. Kelly goes on to say, that it seems to him that the only possibility Mr. Philipzyk had, was to re-apply to the Real Estate Board pointing out his unfortunate circumstances to see if they would entertain a new application for membership. I suggest that the manner of Mr. Philipzyk's expulsion from the Co-Op was not such as to lead him to expect a great deal of sympathy in any further application for membership.

22. We are obviously faced with divergent legal opinions as to the probable success of any such action. Mr. Philipzyk can hardly be blamed for not expecting too much in the way of positive results after a run through the same operation once again.

23. I am bringing these several points forward so that you will have an opportunity to consider them before we meet again.

24. Thanking you for bringing the opinions to my attention. I shall wait to hear from you further concerning the follow-up to our last meeting.

Yours very sincerely,

Encl.
GBM:H

Geo. B. McClellan
Ombudsman.

Exhibit (13)

June 11, 1969.

68-150-2.

Honourable A. Russell Patrick,
Minister of Mines & Minerals,
207 Legislative Building,
EDMONTON 6, Alta.

Dear Mr. Patrick:

Re: Complaint of R. J. Philipzyk

1. Unfortunately your letter of May 21st addressed to me, did not reach my office until June 6th.

2. In the interim, you have, of course, relinquished the portfolio of Minister of Industry and Tourism, and I would presume that I shall henceforth be dealing with the Honourable Mr. R. S. Ratzlaff, who succeeded you.

3. However, in order to tie up any loose ends so far as you are concerned, I am directing this letter to you, and will forward a copy to Mr. Ratzlaff.

4. May I commence by referring to your reference to my original recommendations of February 3rd, particularly paragraph 1(b). I did not make any recommendation that the Attorney General's Department take action to recover civilly for damages on behalf of Philipzyk.

5. In order that there should be no misunderstanding, I quote hereunder my actual recommendations: (Letter of February 3, 1969, paragraphs 13 and 14.)

> " If my view is acceptable, then it follows, I respectfully submit, that there is an obligation on the part of Government to take whatever steps are necessary, to rectify this injustice. I am not, of course, suggesting that anyone can be obligated to provide Mr. Philipzyk with employment in his former position. I do, however,

recommend that Government take whatever steps are necessary, to repeal all of these supplemental by-laws, or to change registration of this organization, to some other form than a co-operative, so that any Real Estate firm in the Province of Alberta, may be free to offer employment to Mr. Philipzyk. Furthermore, Mr. Philipzyk, and all properly licensed Real Estate Salesmen, should no longer be prevented, by any By-law or Regulation, which does not have the force of Legislation, from having access to those Multiple Lists, to which his employer is entitled access.

" Mr. Philipzyk has been unemployed since either the date of his hearing in December 1965, or the rejection of his appeal in May 1966, depending on which was the effective date. I would recommend that steps be taken to compute his average earnings over the period of two years previous to his dismissal, and that an "ex gratia" payment be made for the period during which he has been unemployed, based on that average. "

6. You will remember we discussed procedure at our meeting later, and it was my view that whatever steps were taken by the Government to indemnify Philipzyk for lost salary during his period of unemployment, the Government should take the ultimate responsibility to see that he was indemnified.

7. I realize that you must, of course, give due consideration to the legal opinion which you received from Mr. J. E. Hart, Q.C. Deputy Attorney General.

8. While I have not seen the reasons for Mr. Hart's opinion, he apparently questions my recommendations to you as being: (a) Unwarranted; and (b) Outside my jurisdiction. No question of my jurisdiction to make the investigation which I did, has been raised at any time with me, and I have during that investigation, had discussions with both Mr. Hart and a Solicitor in his Department.

9. To deal first with the suggestion that my recommendation was unwarranted, this would appear to be a question of my judgment as to the fitness of the recommendation, as opposed to my jurisdiction to make it, which he questions

elsewhere. I have very great respect for Mr. Hart's legal opinions, which have proved helpful to me on numerous occasions, but on this aspect of my recommendation, I do suggest that the decision as to whether it is unwarranted or not, is one which properly lies with the Minister first, then the Executive Council, and finally the Legislature.

10. I now refer to the matter of jurisdiction. The question raised refers only to my jurisdiction to make a recommendation. Whatever the situation, I have already made my recommendation. I can find nothing in The Ombudsman Act which leads me to believe there is any justification for my withdrawing it.

11. I refer specifically to Section 20 of The Ombudsman Act, which covers the matters about which I may make a recommendation. There are two major requirements in that Section; first, that I reach an opinion. I have done so - rightly or wrongly. Having done so, I am required to report my opinion and my reasons to the appropriate Minister, and to the Department or Agency concerned. I have done so. The Section then states, referring to the Ombudsman:- "... may make such recommendations as he thinks fit." I have done so.

12. One of the features of the office of Ombudsman in the common law countries particularly, is the fact that while he has wide powers of investigation, he may only recommend remedial action. He has no power to instruct that remedial action be taken. It has been said that this feature is the genius of the thinking which led to the institution of the Ombudsman system; for even should his recommendation be wrong; no harm is done, because it can be rejected at the Ministerial, Cabinet and eventually Parliamentary level.

13. I have not heard the suggestion put forward anywhere else that a situation could arise where the Ombudsman has jurisdiction to make an investigation, but none to report his findings and recommendations to the Minister of the Department responsible.

14. I may have misunderstood the last paragraph of your letter. In that paragraph you refer to the question of jurisdiction which is posed by the Attorney General's Department. That question posed by the Attorney General's Department, as I read it, dealt with my jurisdiction as

discussed above. I wonder if it is suggested the Government is going to Court to test this aspect of the Ombudsman's jurisdiction.

15. I hope that I am not confusing the problem, and may I, in an effort to restore it to its essentials, once again refer to the two paragraphs of my report of February 3rd, as mentioned above. Those were, and still are, my recommendations. Whatever means the Government should undertake to obtain financial indemnification for Mr. Philipzyk, whether it be by civil action or otherwise, is, of course, not a matter for my concern. My concern is that the Government accept responsibility to see, one way or another, that he is indemnified for the average of the salary lost during his period of unemployment.

16. Furthermore, I can only reiterate the views I expressed regarding the Edmonton Real Estate Board Co-Operative Listing Bureau Limited. It is, in my view, not a Co-Operative. My view was confirmed by Mr. McLean of the Attorney General's Department at a meeting held in his office, and subsequently by Mr. Hart at a meeting in his office the same day. At that time Mr. Hart suggested to Mr. Webber, that he take steps to correct any similar situations in the several other Real Estate Co-Operatives throughout the Province.

17. If the Edmonton Real Estate Board Co-Operative Listing Bureau Ltd., is in fact not a Co-Operative, then it is my respectful submission, that those things done under its By-laws, have no force or effect. It is my view that those By-laws, approved by a civil servant, were used to hold what is referred to in the vernacular, as a "kangaroo Court," and used procedures which violated the most essential rights of the individual. They were also used to amend certain of the standard By-laws, which had been passed by the Lieutenant-Governor in Council, among them some of the most basic fundamentals of any real Co-Op.

18. Under the circumstances, I feel that I must continue with my recommendations to a final decision. I assume that I should now direct further correspondence to the Honourable Mr. Ratzlaff, the new Minister responsible for Co-Operative Activities. I will, therefore, send him a copy of this letter which I am writing to you.

Honourable A. Russell Patrick.

I am very grateful for the consideration which you have given to my views, and for the opportunity to discuss it with you personally. I trust that you will find the weight of office somewhat lightened, now that you do not have a dual portfolio to carry.

Very sincerely yours,

Geo. B. McClellan,
OMBUDSMAN.

GBM:H

Copy to: Mr. R. Martland,
Deputy Minister, Industry & Tourism.

Mr. H. W. Webber,
Director, Co-Operative Activities.

Exhibit (14)

June 12, 1969.

68-150-2.

Honourable R. S. Ratzlaff,
Minister of Industry & Tourism,
Centennial Building, EDMONTON.

Dear Mr. Ratzlaff:

Re: Complaint of R. J. Philipzyk

1. I forward herewith copy of a letter which I received June 6th, from the Honourable Mr. Patrick, dated May 21st, at which time I presume he was transferring his portfolio to you.

2. I also forward herewith a copy of my letter of February 3rd, to which the Honourable Mr. Patrick refers. It is noted in that letter that I made my recommendations in this case.

3. There is also a very extensive brief with a number of appendices on this investigation, and a full copy is in the hands of Mr. R. Martland, Deputy Minister.

4. In this case, I made certain recommendations to the then Minister. The Deputy Attorney General has expressed an opinion apparently, that I have no jurisdiction to make such recommendations. Regretfully, I cannot concur in this opinion.

5. My procedure, as required by The Ombudsman Act, would normally be now, that I forward my opinion and recommendations to the President of the Executive Council for consideration. If the matter could not be resolved at that level, I could then forward my opinions and recommendations to the Legislature for consideration by that body.

6. Mr. Philipzyk is in dire financial circumstances, and due to the present attitude of the E.R.E.B. Co-Op Listing Bureau Ltd., is unable to obtain employment with any agency which is a member of that Board. Should it become necessary to make a report to the Legislature in this matter, such report could not, of course, be dealt with until the next sitting of the Legislature in 1970, and I presume I would then have to give consideration to Section 26(2)(b) of The Ombudsman Act, in the interests of the complainant. This Section authorizes the making public of reports. If the Legislature were sitting, then, of course, I would not consider such procedure until after the Legislature had received my report, at which time it would automatically become public as soon as it was tabled. It is the period of many months between sittings of the Legislature which creates the problem.

7. I may say, that so far no case has gone to the point where I have had to consider making my recommendations to the Executive Council, and I assure you, that I feel very sorry indeed to have to bring this problem to your doorstep so early in your new portfolio.

8. While I do not wish to stress urgency at this very busy time for you, none the less, I would point out that the complainant has been unemployed for a considerable period of time, and is a man over sixty.

9. I would be most hesitant to proceed with a submission to the Executive Council without your having had an opportunity to fully acquaint yourself with the background of this case.

10. I would, therefore, be most grateful if you could see your way clear to reading the original brief which was forwarded in a looseleaf ledger to Mr. Martland, and the subsequent correspondence with the officers of your Department, and with your predecessor, the Honourable Mr. Patrick. I would be available to discuss the matter with you as fully as you would like before considering what further steps may need be taken.

Honourable R. S. Ratzlaff,

---

11. Once again, please excuse me for having to bring this to your attention before you have really settled in, but I assure you I do so only because this case has lingered on for many months.

12. May I also wish you success and much satisfaction in your new labours.

Yours sincerely,

Encl.
H.

Geo. B. McClellan,
Ombudsman.

Copy to: Mr. R. Martland,
Deputy Minister, Industry & Tourism.

Mr. H. W. Webber,
Director, Co-Operative Activities.

Exhibit (15)

MINISTER OF INDUSTRY & TOURISM
ALBERTA

1824 Centennial Building,
Edmonton 15, Alberta,
June 19, 1969.

Ref: Your File 68-150-2

Mr. Geo. B. McClellan,
Ombudsman,
920 Centennial Building,
Edmonton 15, Alberta,

Dear Mr. McClellan:

Re: Complaint of R. J. Philipzyk

Thank you for your letter of June 12th and attachments re the above.

I appreciate the detailed information on this case and I shall certainly study the brief and correspondence and discuss the whole situation with Mr. Martland in order that I may be thoroughly informed before considering subsequent action.

Yours truly,

R. B. Ratzlaff

R. B. RATZLAFF,
Minister of Industry and Tourism.

cc:RM

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Exhibit (16)

68-150-2

August 20, 1969

The Honourable R.S. Ratzlaff
Minister of Industry & Tourism
1824 Centennial Building
EDMONTON 15, Alberta

Dear Mr. Ratzlaff:

Re: Complaint of R.J. Philipzyk

1. I am writing you further to my letter of June 12, 1969, and your reply of June 19, 1969.

2. I have had this case under investigation since March 1968. The complainant, Mr. Philipzyk, as a result of his expulsion from the Edmonton Real Estate Board Co-operative Listing Bureau Limited, and his subsequent dismissal from his position by his employer, has been denied employment in any Real Estate Company in Edmonton having access to the Multiple Listing Bureau records. He has been denied this employment for approximately three years.

3. It is my opinion as submitted to your predecessor, the Honourable Mr. Patrick, and to you, that the Edmonton Real Estate Board Co-operative Listing Bureau Limited were able to take the action they did, as a result of bylaws which had been approved by a civil servant, which bylaws, in my opinion, violate elementary natural justice.

4. I cannot accept the position taken by the Edmonton Real Estate Board Co-operative Listing Bureau Limited in its submissions to your Department, that Mr. Philipzyk could seek employment in one of the Edmonton Real Estate Companies who are not members of the so-called Co-op. Whether he could or whether he could not obtain such employment is in my view immaterial. The question in my view, is whether or not the Government through one of its officers, should have provided the means by which this man lost his employment following a so-called hearing, which is clearly admitted to have been a travesty of justice.

5. Furthermore, as I think I mentioned before, it is my view that the Edmonton Real Estate Board Co-operative Listing Bureau Limited is not a Co-op, and this view has been confirmed orally to me and to my solicitor by solicitors of the Department of the Attorney General. None the less, this organization is, as of this date, advertising by radio as a Co-operative.

6. I have one major interest in this case, which is to endeavour to rectify the injustice which I firmly believe Mr. Philipzyk has suffered, and if possible, to persuade the Government to take appropriate steps so that such further injustices will not occur with the concurrence, as well intentioned as it may have been, of any Government Department.

7. This has been a lengthy investigation and it has resulted in voluminous reports. It has been suggested to me orally only, that the Attorney General's Department might take legal action against the Co-op on behalf of Mr. Philipzyk. A recent check indicates that no such action has been commenced, nor has Mr. Philipzyk been advised of any such action.

8. There have been considerable negotiations between officers of your Department and the Edmonton Real Estate Board Co-operative Listing Bureau Limited, but Mr. Philipzyk's position remains identical to what it was three years ago.

9. Under the circumstances and in accordance with my obligation to the complainant as required by The Ombudsman Act, I feel that I must press this case with all dispatch.

10. I would most earnestly and respectfully seek your decision on my original opinions and my recommendations for the remedying

of the injustice which I firmly believe has been suffered by Mr. Philipyk.

11. I realize that with the assumption of your new Portfolio new responsibilities have been thrust upon you, and I know you will be equally conscious of the responsibilities which I must carry out by the terms of my Office.

Yours very sincerely,

Geo. B. McClellan

Geo. B. McClellan
Ombudsman

GBM
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